

The Gazette of India



PUBLISHED BY AUTHORITY

No. 5] NEW DELHI, SATURDAY, JANUARY 30, 1954

NOTICE

The undermentioned Gazettes of India Extraordinary were published upto the 23rd January 1954 :—

Issue No	No. and date	Issued by	Subject
13	S.R.O. 234, dated the 18th January, 1954.	Delimitation Commission, India.	Corrections in the Final Order No. 7, dated the 25th December, 1953. (S. R. O. 2377).
14	S.R.O. 235, dated the 8th January, 1954	Election Commission, India.	Election Petition No. 227/7 of 1952.

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

PART II—Section 3

Statutory Rules and Orders issued by the Ministries of the Government of India (other than the Ministry of Defence) and Central Authorities (other than the Chief Commissioners).

ELECTION COMMISSION, INDIA

New Delhi, the 21st January 1954

S.R.O. 334.—In pursuance of sub-rule (5) of rule 114 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, the names of the person shown in column 1 of the Schedule below, who having been nominated as candidates for election to the House of the People from the constituency specified in the corresponding entries in column 2 thereof and each having appointed himself to be his election agent at the said election, have, in accordance with the decision given by the Election Commission under sub-rule (4) of the said rule, failed to lodge the returns of election expenses within the time and in the manner required and have thereby incurred the disqualifications under clause

(c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), are hereby published:—

SCHEDULE

Name of the candidate I	Name of constituency 2
Shri Babu Lal of Aligarh	Aligarh District
Shri Natha Ram of Nagla Jogiya	Aligarh District

[No. UP-P/52(92).]

S.R.O. 335.—In pursuance of sub-rule (5) of rule 114 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, the name of the person shown in the Schedule below who having been nominated as a candidate for bye-election to the Council of States by the elected members of the Andhra Legislative Assembly, and having appointed himself to be his election agent, at the said bye-election, has, in accordance with the decision given by the Election Commission under sub-rule (4) of the said rule 114, failed to lodge the return of election expenses within the time and in the manner required and has thereby incurred the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act (XLIII of 1951), is hereby published:—*

SCHEDULE

Shri Gottemukkala Ramachandra Raju.

[No. AD-CS/53(1)/Bye.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

MINISTRY OF LAW

New Delhi, the 22nd January 1954

S.R.O. 336.—In exercise of the powers conferred upon him by clause (1) of article 103 of the Constitution, and acting in accordance with the opinion of the Election Commission obtained under clause (2) of the said article and set out in the Appendix hereto, the President has rejected the petition, dated the 23rd October, 1953, submitted by Shri Shankar Tripathi against Shri J. N. Wilson, a Member of the House of the People.

APPENDIX

ELECTION COMMISSION, INDIA

OPINION

In re: Shri J. N. Wilson, M.P.

This is a petition submitted to the President under article 102 of the Constitution by Shri Shankar Tripathi, who at the last general elections was a contesting candidate for election in the Mirzapur District-cum-Banaras District (West) Parliamentary constituency, alleging that the returned candidate, Shri J. N. Wilson, incurred disqualification for membership of the House of the People for "contravening the President's notification issued under section 15 of R.P. Act, 1951, and using aeroplane against the provisions of sub-section 6 of section 123 of R.P. Act, 1951". Earlier, Shri Tripathi filed an election petition, on 6th May 1952, challenging the election of Shri Wilson, and the Tribunal dismissed that petition by its order, dated the 22nd December, 1952. The order of the Tribunal took effect on the 29th December, 1952, on publication in the Gazette of India. Shri Tripathi has stated that he has filed a writ petition in the Supreme Court for quashing the findings and order of the Tribunal, and to declare him duly elected in place of Shri Wilson.

It is not quite clear from the petition what exactly are the grounds on which Shri Tripathi has raised the question of Shri Wilson's disqualification under article

102 of the Constitution. It seems, his contention is that as Shri Wilson used an aeroplane in connection with his election campaign, and as the use of the aeroplane was permitted by the District Magistrate, a major corrupt practice was committed within the meaning of section 123(6) of the Representation of the People Act, 1951, and therefore, Shri Wilson is disqualified for being a member of the House of the People. This was also one of the main points on which the election petition was filed by Shri Tripathi and an issue (No. 8) was specifically framed by the Tribunal to decide the point. The Tribunal, however, came to the conclusion that the use of the aeroplane by Shri Wilson did not amount to a corrupt practice.

Under article 329(b) of the Constitution, no election to the House of the People can be called in question except by an election petition, and since the petition filed by Shri Tripathi has been dismissed, it is not permissible for him to re-agitate the question in another form.

Clause (e) of article 102 of the Constitution under which the question of Shri Wilson's disqualification has been raised by Shri Tripathi relates to disqualification by or under any law made by Parliament. It therefore seems Shri Tripathi's contention is that Shri Wilson is disqualified under section 7(a) of the Representation of the People Act, 1951 for having committed a major corrupt practice mentioned in section 140 of that Act. But as the Tribunal has specifically recorded that no corrupt practice was committed by Shri Wilson, the question of any disqualification under section 7(a) of the Representation of the People Act, 1951 read with article 102 of the Constitution, does not arise.

The Commission is therefore of the opinion that the petition should be rejected and it should be decided that Shri Wilson, M.P., has not become subject to any of the disqualifications mentioned in article 102 of the Constitution.

The 28th December 1953.

(Sd.) S. SEN,
Chief Election Commissioner.

[No. F.59(3)/58-L.]

K. V. K. SUNDARAM, Secy.

New Delhi, the 22nd January 1954

S.R.O. 337.—In exercise of the powers conferred by clause (1) of article 299 of the Constitution, the President hereby directs that the following further amendment shall be made in the notification of the Government of India in the Ministry of Law No. S.R.O. 215 dated the 9th February, 1952, relating to the execution of contracts and assurances of property, namely:

In Part V of the said notification, under Head A, in item 3, after the words "by Collectors of Districts", the words "or Circle Superintendents, Central Department of Archaeology" shall be added.

[F. 32-III/52-L.]

B. N. LOKUR, Dy. Secy.

MINISTRY OF HOME AFFAIRS

New Delhi, the 20th January 1954

S.R.O. 338.—In pursuance of clause (1) of article 239 of the Constitution and in supersession of the notification of the Government of India in the late Department of Communications No. R-60, dated the 28th June, 1939, the President hereby directs that the Chief Commissioners of Delhi, Ajmer and Coorg shall, subject to the control of the President and until further orders, exercise the powers and discharge the functions of the State Government under the Motor Vehicles Act, 1939 (IV of 1939) within their respective States.

[No. 43/36/53-Judl-I.]

S.R.O. 339.—In pursuance of clause (1) of article 243 of the Constitution and in supersession of the notification of the Government of India in the late Department of Communications No. R-60, dated the 28th June, 1939, the President hereby directs that the Chief Commissioner of the Andaman and Nicobar Islands shall, subject to the control of the President and until further orders, exercise the powers and discharge the functions of the State Government under the Motor Vehicles Act, 1939 (IV of 1939) within the said Islands.

[No. 43/36/53-Judl-II.]

N. SAHGAL, Dy. Secy.

ORDER

New Delhi, the 21st January 1954

S.R.O. 340.—In exercise of the powers conferred by sub-section (2) of section 63 of the Andhra State Act, 1953 (30 of 1953), the President hereby requires all persons specified by name in column (1) or by official designation in column (2) of the Schedule to this Order, to serve in connection with the affairs of the State of Andhra, as allotted officers or as transferred officers, as stated in the corresponding entries in column (3) of the said Schedule.

SCHEDULE

Name I	Official Designation 2	Allotted Officer or Transferred Officer 3
<i>Madras Women's Welfare Department</i>		
<i>Headquarters establishment</i>		
V. Kannan	Peon	Allotted Officer.
D. Pachiappan	Peon	Allotted Officer.
<i>Madras Highways Department</i>		
Sri A. N. Damodaram Naidu	Technical Assistant to the Chief Engineer (Highways).	Allotted Officer.
<i>Madras Public Works Department</i>		
Sri J. I. Coll Pillai	Executive Engineer	Transferred Officer.

[No. 26/4/53-AIS(I).]

N. N. CHATTERJEE, Dy. Secy.

MINISTRY OF STATES

New Delhi, the 25th January 1954

S.R.O. 341.—In exercise of the powers conferred by Entry 3(b) of the Table annexed to Schedule I to the Indian Arms Rules, 1951, the Central Government is pleased to specify

1. Shri Ranjitsinhji Harbhamji, and
 2. Shri Prabhatsinhji Harbhamji,
members of the family of the Ruler of Morvi for the purposes of that entry.
- This Ministry's notification No. S.R.O. 2211, dated the 1st December 1953 is hereby cancelled.

[No. 7-D.]

S. K. AYANGAR, Under Secy.

MINISTRY OF FINANCE**Department of Economic Affairs***New Delhi, the 19th January 1954*

S.R.O. 342.—In exercise of the powers conferred by Section 33 of the Banking Companies Act, 1949 (X of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of section 11 of the said Act shall not apply to the Premier Bank of India Ltd. for a period up to and including the 31st March 1955.

[No. F.4(2)-F.I/54.]

N. C. SEN GUPTA, Dy. Secy.

Department of Economic Affairs**CHARTERED ACCOUNTANCY***New Delhi, the 30th January 1954*

S.R.O. 343.—In pursuance of sub-section (3) of section 13 of the Chartered Accountants Act, 1949 (Act No. XXXVIII of 1949), the Central Government hereby nominates Mr. F. A. Cole of Messrs. A. F. Ferguson & Co., Allahabad Bank Buildings, Apollo Street, Bombay to the Council of the Institute of Chartered Accountants of India vice Mr. A. H. Just, resigned.

[No. 66(3)-ICA/53.]

B. K. KAUL, Dy. Secy.

Office of the Controller of Capital Issues**O R D E R***New Delhi, the 23rd January, 1954*

S.R.O. 344.—In exercise of the powers conferred by sub-section (1) of section 6 of the Capital Issues (Continuance of Control) Act, 1947 (XXIX of 1947), the Central Government hereby directs that the following amendment shall be made in the Capital Issues (Exemption) Order, 1949, published with the Order of the Government of India in the Ministry of Finance No. F.14(1)-CCI/49, dated the 20th January, 1949, and that the said amendment shall be deemed to have had effect as from the 31st January, 1953, namely:—

For sub-clause (c) of clause 3 of the said Order, the following sub-clause shall be substituted, namely:—

“(c) Loans granted, and debentures taken up, by the Industrial Finance Corporation constituted under the Industrial Finance Corporation Act, 1948 (XV of 1948), or any State Financial Corporation constituted under the State Financial Corporations Act, 1951 (LXIII of 1951) or by the Madras Industrial Investment Corporation Limited.”

[No. F. 14(5)-CCI/53/211.]

D. L. MAZUMDAR,
Controller of Capital Issues.

MINISTRY OF FINANCE (REVENUE DIVISION)**CENTRAL EXCISES***New Delhi, the 22nd January 1954*

S.R.O. 345.—In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby directs that power alcohol shall be exempt from the whole of the duty leviable thereon under section 3 of the Central Excises and Salt Act, 1944 (I of 1944), provided that:—

(i) it is proved to the satisfaction of the Collector of Central Excise that such power alcohol is intended for use in the manufacture of acetic acid and ethyl acetate, and shall not be used for providing motive power for any form of motor vehicle or aircraft, and

- (ii) the procedure set out in Chapter X of the said Rules is followed in respect of obtaining remission of duty on such power alcohol.

[No. 2.]

M. P. ALEXANDER, Under Secy.

CENTRAL BOARD OF REVENUE

INCOME-TAX

New Delhi, the 15th January 1954

S.R.O. 346.—In pursuance of sub-section (4) of Section 5 of the Indian Income-tax Act, 1922 (XI of 1922), the Central Board of Revenue directs that the following further amendments shall be made in the Schedule appended to its Notification No. 32-IT, dated the 9th November, 1946:—

In the said Schedule, under the sub-head "III-A Bombay North."—

- (1) Against Ahmedabad Range II, the entry "Ahmedabad Circle II, excluding Ward-C", shall be substituted for the existing entry "Ahmedabad Circle II";
- (2) Against Ahmedabad Range III, the entries "Ahmedabad Circle II, Ward-C" and "Petlad Circle" shall be added after the existing entry "Viramgam Circle"; and
- (3) Against Baroda Range, the last entry "Petlad Circle" shall be deleted.

[No. 5.]

G. L. POPHALA, Secy.

MINISTRY OF FOOD AND AGRICULTURE

AGRICULTURE

New Delhi, the 20th January 1954

S.R.O. 347.—The following draft of certain rules which it is proposed to make in exercise of the powers conferred by section 3 of the Agricultural Produce (Grading and Marking) Act, 1937 (I of 1937), is published as required by the said section, for the information of all persons likely to be affected thereby, and notice is hereby given that the said draft will be taken into consideration after the 20th February, 1954.

Any objection or suggestion which may be received from any person with respect to the said draft before the date specified will be considered by the Central Government.

Draft rules

1. *Short title and application.*—(i) These rules may be called the Essential Oils Grading and Marking Rules, 1953.

(ii) They shall apply to essential oils produced in India.

2. *Grade designations.*—Grade designations to indicate the quality of essential oils produced in India shall be as set out in column I of Schedules III and IV annexed to the Rules.

3. *Definition of quality.*—The quality indicated by the grade designations shall be as set out against such designations in columns 2 to 7 of Schedules III and IV annexed to the Rules.

4. *Grade designation marks.*—The grade designation mark shall consist of a label, bearing a design (consisting of an outline map of India with the word "AGMARK" and the figure of the rising Sun with words "Produce of India") resembling that set out in Schedule I specifying the name of the essential oil, the grade designation and in colours specified in the aforesaid Schedule.

5. *Method of Marking.*—(i) The grade designation mark shall be securely applied to each container in the manner approved by the Agricultural Marketing Adviser to the Government of India and the following particulars shall be marked on the container or the label:—

- (a) name of packer;
- (b) place of packing;
- (c) date of packing; and
- (d) lot number.

(ii) An authorised packer may after obtaining the previous approval of the Agricultural Marketing Adviser to the Government of India, mark his private trade mark on a container in a manner approved by the said officer: Provided that the private trade mark does not represent quality or grade of essential oil different from that indicated by the grade designation mark affixed on the container in accordance with the said Rules.

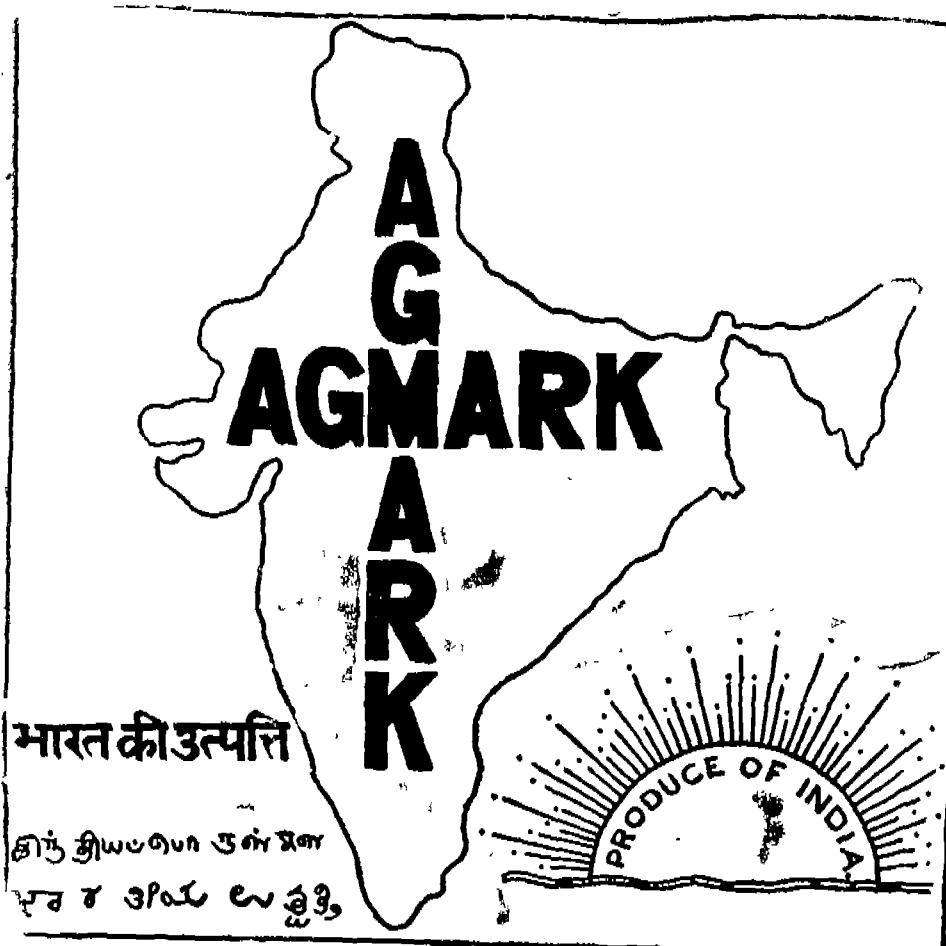
(iii) Only clean containers which shall be securely closed and sealed in a manner approved by the Agricultural Marketing Adviser to the Government of India shall be used for packing.

6. Special conditions of certificate of authorisation.—In addition to the conditions specified in rule 4 of the General Grading and Marking Rules, 1937, the conditions set out in Schedule II, shall also be the conditions subject to which a certificate of authorisation is issued for the purposes of rules.

SCHEDULE I

(a) Grade designation mark for Essential Oils.

(See rule 4)



(b) Colour scheme.

(i) Lemongrass oil.

Grade designation

Colour of lettering showing the grade

Colour of border of the label

Special
Grade A

Red
Green

Red
Green

(ii) Sandalwood oil.

Grade designation	Colour of lettering showing the grade	Colour of border of the label
Grade A	Red	Red

SCHEDULE II

(See rule 6)

(a) An authorised packer shall have suitable arrangements for filtration, blending, and storage of essential oils.

(b) If an authorised packer handles more than one essential oil on the same premises, adequate precautions shall be taken to avoid the mixing of different oils.

(c) An authorised packer shall make such arrangements for testing essential oils as may be prescribed, and a duplicate sample from each lot of essential oil to be graded shall be forwarded to such Control Laboratory as may be notified from time to time by the Agricultural Marketing Adviser to the Government of India.

(d) All instructions regarding the methods of sampling, analysis packing etc. which may from time to time be issued by the Agricultural Marketing Adviser to the Government of India, consistent with the provisions of the Act and the rules made thereunder, shall be strictly observed.

SCHEDULE III*

Grade designations and definition of quality of East Indian Lemongrass Oil (Cochin Lemongrass Oil)
(See rules 2 and 3)

Physiochemical characteristics

Grade designation	Specific gravity at 30°/30° C. [†]	Optical rotation	Refractive Index at 30° C. [‡]	Total aldehyde content (Citral) (determined by bisulphite method) [§]	Solubility in 70% ethyl alcohol	Description and appearance	
						1	2
Special . .	0.888 to 0.898	51° to -3°	1.4808 to 1.4868	Not less than 80%	Soluble in 2 to 3 volumes.	The East Indian Lemongrass oil shall be the reddish-yellow to brown mobile essential oil obtained by the process of steam distillation and/or water distillation of clean <i>Cymbopogon flexuosus</i> (D.C.) Staff, plants and shall be free from admixture with any other oil or substance.	
Grade A . .	0.888 to 0.898	51° to 3°	1.4808 to 1.4868	Not less than 76%	Soluble in 2 to 3 volumes.	It shall have a lemon-like odour and shall be clear, free from any sediment, and suspended matter. It shall be dry.	

* The specifications are based on The Indian Standard Specification For Lemongrass Oil (IS : 327-1952).

† The correction factor for specific gravity for each degree Centigrade rise in temperature shall be —0.00079.

‡ The correction factor for refractive index for each degree Centigrade rise in temperature shall be —0.00044.

§ The actual citral content shall be suitably indicated.

SCHEDULE IV*

Grade designations and definition of quality of East Indian Sandalwood Oil

(See rules 2 and 3)

Grade designation	Physiochemical characteristics						Description and appearance
	Specific Gravity at 30°/30° C. [†]	Optical rotation	Refractive index at 30° C. [‡]	Total alcohol (Santalol) content	Solubility in 70% ethyl alcohol		
1	2	3	4	5	6	7	
Grade A	0.9620 to 0.9760	-15° to -20°	1.4990 to 1.5060	Not less than 90% Soluble in 5 volumes	It shall be clear, free from sediment and suspended matter. It shall be dry and shall have the characteristic faint but persistent odour and unpleasant taste.		The East Indian Sandalwood oil shall be the pale-yellow or nearly colourless essential oil obtained by steam distillation and/or water distillation of <i>Santalum album</i> , Linn only, and shall be free from admixture with any other oil or substance.

* The specifications are based on the Indian Standard Specification for Sandalwood Oil (IS : 329-1952.)

† The correction factor for specific gravity for each degree Centigrade rise in temperature shall be—0.00070.

‡ The correction factor for refractive index for each degree Centigrade rise in temperature shall be—0.00039.

[No. F. 5-86/52-Dte.II.]

S. D. UDHRRAIN, Under Secy.

(Agriculture)

New Delhi, the 21st January 1954

S.R.O. 348.—The following draft of the following further amendments to the Indian Oilseeds Committee Rules, 1947, which it is proposed to make in exercise of the powers conferred by section 17 of the Indian Oilseeds Committee Act, 1946 (IX of 1946), is published as required by sub-section (1) of the said section, for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration on or after the 20th February, 1954.

Any objections or suggestions which may be received from any person with respect to the said draft before the date specified will be considered by the Central Government.

Draft Amendments

In the said rules:—

(1) in rule 24, sub-rule (3) shall be omitted and sub-rule (4) shall be re-numbered as sub-rule (3).

(2) in rule 25, after sub-rule (1) the following sub-rule may be inserted, namely:—

(1A) The President of the Committee may sanction a variation in any approved scheme upto the following financial limits, namely:—

(a) where the cost of the approved scheme is Rs. 50,000 or less, Rs. 5,000;

(b) where the cost of the approved scheme exceeds Rs. 50,000, Rs. 10,000 provided that such variation is not inconsistent with the nature and object of the scheme itself.

[No. F.5-109/51-Com-I.]

F. C. GERA, Under Secy.

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 18th January 1954

S.R.O. 349.—In exercise of the powers conferred by section 6 of the Cinematograph Act, 1952 (XXXVII of 1952), the Central Government hereby directs that the film entitled 'My Son John' in respect of which 'U' certificate No. 7264, dated the 15th December 1952 was granted by the Central Board of Film Censors to Messrs. Paramount Films of India Ltd., Bombay, shall be deemed to be an uncertified film in the whole of India.

[F. No. 12/28/53-FII.]

D. KRISHNA AYYAAR, Under Secy.

New Delhi, the 19th January 1954

S.R.O. 350.—In exercise of the powers conferred by Section 17 of the Cinematograph Act, 1952 (XXXVII of 1952), the Central Government hereby exempts cinematograph exhibition of educational films in the premises of educational institutions in all Part 'C' States from the operation of section 10 of the aforesaid Act, subject to the following conditions:—

1. Only films of a predominantly educational nature, certified as such by the Central Board of Film Censors or one of the former State Boards, shall be so exhibited or permitted to be exhibited.
2. No film which has been certified by the Central Board of Film Censors or a former State Board of Film Censors as suitable for public exhibition restricted to adults only shall be exhibited or permitted to be exhibited to a person who is not an adult.
3. No film which has been declared as uncertified or whose exhibition has been suspended under the Cinematograph Act 1952 (XXXVII of 1952) shall be exhibited or permitted to be exhibited.
4. No admission fee, except to the extent required to cover expenses, shall be charged.
5. No person other than students and staff of the institution, members of the Managing Committees of the institutions and any guest specially invited by the authorities of the institutions and those enumerated under condition (11) below shall be admitted to the show.
6. Only 16 mm. non-inflammable or 35 mm. non-inflammable films and film-strips shall be exhibited or permitted to be exhibited.
7. No advertisement films shall be exhibited or permitted to be exhibited.
8. The licensing authority shall be informed at least 48 hours in advance of the time and place of such exhibition.
9. All institutions which avail themselves of this exemption shall maintain a register of the films exhibited and comply with any other directions that may be issued in this behalf by the State Government. The register shall be open to inspection by duly authorised officers of the State Government.
10. This exemption shall be valid for a period of one year with effect from the date of issue of this notification, unless revoked earlier.

11. Employees of the State Government, members of the Central Board of Film Censors and of its Advisory Panels and Regional and Assistant Regional Officers of the Board engaged in the discharge of their official duties shall be admitted to the place where the exhibitions are held and to the film shows.

[No. 20/14/51-FII.]

C. B. RAO, Dy. Secy.

MINISTRY OF NATURAL RESOURCES AND SCIENTIFIC RESEARCH

New Delhi, the 22nd January 1954

S.R.O. 351.—The Central Government being satisfied that it is in the public interest so to do, is pleased, in exercise of its powers under Section 12 of the Mines and Minerals (Regulation and Development) Act (LIII of 1948) to authorise the grant by the Government of West Bengal of certificates of approval, exploring licences, prospecting licenses and mining leases as provided in sub-clause (a) of clause 1 of the Joint Operating Agreement, dated 24th December 1953 between the Standard Vacuum Oil Company and the Government of India.

[No. 179(1)/54-MIL.]

M. MALHOTRA, Under Secy.

MINISTRY OF WORKS, HOUSING AND SUPPLY

(Central Boilers Board)

New Delhi, the 21st January 1954

S.R.O. 352.—The following draft of certain amendments to the Indian Boiler Regulations, 1950, which the Central Boilers Board propose to make in exercise of the power conferred by section 28 of the Indian Boilers Act, 1923 (V of 1923), is published as required by sub-section (1) of section 31 of the said Act, for information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration on or after the 31st March 1954.

Any objections or suggestions which may be received from any person with respect to the said draft before the date specified will be considered by the Central Boilers Board. Such objections or suggestions should be addressed to the Secretary, Central Boilers Board, Ministry of Works, Housing and Supply, North Block, New Delhi.

Draft Amendments

In the said Regulations—

1. In regulation 302,
 - (i) For the existing heading, the following heading shall be substituted, namely—
“Repairs to Boilers and Steam Pipes”.
 - (ii) After the word “girders” appearing in the fourth line, the words “and steam pipes” shall be inserted.
2. In Regulation 281, the following words shall be added at the end, namely—
“In the case of boilers fitted with integral superheaters, an additional safety valve shall be fitted at the end of the outlet header”.
3. For Regulation 534 the following shall be substituted, namely—
 - (a) Every economiser shall have a plate with its registry number engraved, secured in a conspicuous place and wherever practicable stamped for identification with that number in a prominent place.
 - (b) A letter “E” shall be prefixed to the registry number in the denominator of the appropriate device as shown in Regulation 382. Example: UP 53.

4. In regulation 123, after clause (a) the following shall be inserted, namely:—

“(aa) In the case of vertical boilers where tube plates form part of the firebox, the tube plate portion may be constructed in two vertical sections and the vertical seams when welded shall be stress relieved.”

5. In Regulation 316, in clause (b) the words “riveted to the shell” appearing in the second line shall be omitted.

6. In Regulation 314, after the words “on end” the words “on a horizontal plane” shall be inserted.

[No. BL-304(12)/53.]

S.R.O. 353.—In exercise of the powers conferred by section 28 of the Indian Boilers Act, 1923 (V of 1923), the Central Boilers Board hereby directs that the following further amendment shall be made in the Indian Boiler Regulations, 1950, the same having been previously published as required by sub-section (1) of section 31 of the said Act, namely:—

After clause (c) of regulation 335 of the said Regulations, the following clause shall be inserted, namely:—

“(d) The discharge end of feed pipe shall be so located that it is not close to any riveted joint of the furnace plates or of the shell.”

[No. BL-304(3)/52.]

S.R.O. 354.—In pursuance of clause (c) of regulation 4 of the Indian Boiler Regulations, 1950, the Central Boilers Board hereby recognises the following further firms as “Well-known” Steel Makers in terms of the Indian Boiler Regulations, 1950, namely:—

1. Messrs. South Durham Steel & Iron Co. Ltd., United Kingdom.

2. Messrs. Steel Company of Scotland Ltd., United Kingdom.

[No. BL-334(1)/52.]

H. K. BANSAL,
Secretary, Central Boilers Board.

REGISTRAR JOINT STOCK COMPANIES

NOTICES

Bombay, the 20th January, 1954

In the matter of the Indian Companies Act, VII of 1913 and of the Karnataka Tractor Cultivation & Allied Industries Limited.

S.R.O. 355.—Notice is hereby given pursuant to Section 247 of the Indian Companies Act VII of 1913, that at the expiration of three months from the date hereof the name of the Karnataka Tractor Cultivation & Allied Industries Limited, will, unless cause is shown to the contrary, be struck off the Register and the said Company will be dissolved.

[No. 8755.]

Bombay, the 24th January, 1954

In the matter of the Indian Companies Act, VII of 1913 and of the Shreedhar & Co., Limited.

S.R.O. 356.—Notice is hereby given pursuant to Section 247 of the Indian Companies Act VII of 1913, that at the expiration of three months from the date hereof the name of the Shreedhar & Co., Limited., will, unless cause is shown to the contrary, be struck off the Register and the said Company will be dissolved.

[No. 6431.]

M. V. VARERKAR,
Registrar of Companies, Bombay.

MINISTRY OF REHABILITATION

New Delhi, the 22nd January, 1954

S.R.O. 357.—In exercise of the powers conferred on me by Sub-section (2) of Section 10 of the Displaced Persons (Claims) Supplementary Ordinance, 1954 (No. 3 of 1954), I delegate the powers specified below to all the Settlement Commissioners to be exercised by them in relation to revision of cases to be decided under the said Ordinance:—

Proviso to Sub-Section (3) of Section 4.—Power to call for the record of any case which has been decided by the Settlement Officer and to make such order as he thinks fit.

[No. 3(2) CSC/Genl./C.W./54.]

S.R.O. 358.—In exercise of the powers conferred on me by sub-section (2) of Section 10 of the Displaced Persons (Claims) Supplementary Ordinance, 1954 (No. 3 of 1954), I delegate the powers specified below to Shri R. K. Vaish, Settlement Commissioner to be exercised by him for performing the functions assigned to me under the Ordinance:—

1. *Proviso to sub-section (1) of Section 4.*—Power to allocate or distribute cases to be decided by Settlement Officers.
2. *Proviso to sub-section (2) of section 6.*—Power to require a Settlement Officer to appoint one or more persons as assessors to advise him in any proceeding before him.
3. *Section 7.*—Power to transfer a case pending before a Settlement Officer to another Settlement Officer.

[No. 3(2-a) CSC/Genl./C.W./54.]

S.R.O. 359.—In exercise of the powers conferred on me by Sub-section (2) of Section 10 of the Displaced Persons (Claims) Supplementary Ordinance, 1954 (No. 3 of 1954), I delegate the powers specified below to all the Settlement Commissioners and Additional Settlement Commissioners to be exercised by them in relation to revision of cases decided under the Principal Act:—

Section 5.—Special powers of revision in respect of the cases decided under the Principal Act

[No. 3(3) CSC/Genl./C.W./54.]

N. C. SHRIVASTAVA,
Chief Settlement Commissioner
& Joint Secy.

MINISTRY OF LABOUR

New Delhi, the 20th January 1954

S.R.O. 360.—In exercise of the powers conferred by sub-section (1) of section 19 of the Minimum Wages Act, 1948 (XI of 1948), the Central Government hereby directs that the following amendment shall be made in the notification of the Government of India in the Ministry of Labour No. S.R.O. 1852, dated the 3rd October, 1953, namely:—

In the schedule to the said notification in column 2 for the entry "The States of Madras, Mysore, Travancore-Cochin and Coorg" the entry "The States of Madras, Andhra, Mysore, Travancore-Cochin and Coorg" shall be substituted.

[No. LWI 24(60).]

CORIGENDUM

New Delhi, the 21st January 1954

S.R.O. 361.—In the notification of the Ministry of Labour No. S.R.O. 1787, dated the 17th September 1953, published at pages 1502-4 in Part II, Section 3 of the Gazette of India, dated the 26th September 1953, in sub-rule (1) of rule 1 for "1952" read "1953".

[No. M-41 (25) 52.]

A. P. VEERA RAGHAVAN, Under Secy.

New Delhi, the 20th January 1954

S.R.O. 362.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the matter of an application under section 33A of the said Act from Shri Hrisikesh Digor, a workman of Saltore Colliery.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

APPLICATION No. 92 OF 1953

(arising out of Reference No. 6 of 1952)

In the matter of an application U/S 33A of Industrial Disputes Act, 1947.

PRESENT

Shri L. P. Dave, B.A., LL.B., *Chairman.*

PARTIES

Sree Hrisikesh Digor, Assistant Electrician, Saltore Colliery, Saltore P.O., Dist. Manbhum, Bihar—*Complainant.*

Vs.

Messrs. Burrakur Coal Co. Ltd., Saltore Colliery, P.O. Saltore, District Manbhum, Bihar—*Opposite Party.*

APPEARANCES

Shri Kanti Mehta, General Secretary, Bihar Colliery Mazdoor Sangh, Opposite Imperial Bank of India, Dhanbad, Bihar—*For the Complainant.*

Shri D. N. Gupta, Chief Personnel Officer, M/s. Bird & Co. Ltd., P.O. Sijua, Dist. Manbhum—*For the Opposite Party.*

AWARD

This is a complaint under Section 33A of the Industrial Disputes Act.

2. The complainant alleges as under:—

He was working as an electrician at the Saltore Colliery of the opposite party for over eight years. One Ashu Mistry was working as Head Electrician and the complainant was the next man in seniority and efficiency in the department. As Ashu Mistry was due to retire shortly, the complainant gave an application to the Manager on 15th July 1952 requesting that he be promoted as Head Electrician on Ashu's retirement. The Manager considered the application and granted it and passed an order on the application as "settled". One A. K. Sen, who was working as an electrician in the Standard Colliery of the opposite party, had been transferred on the closure of that colliery to Mudidih-Bhadruchawk colliery which is another colliery of the opposite party and he was suddenly transferred therefrom to the Saltore Colliery. The complainant believed that the said Sen was in good relation with the Electrical Engineer and his transfer to Saltore Colliery on the eve of Ashu's retirement was with a view to appointing him to that post. Thereupon the complainant renewed his application for promotion on 12th August 1952 through the President of the Workmen's Union. The Manager was annoyed at this and took the complainant to task. The complainant thereupon again complained to the Union. In order to make way for Sen for the post of Head Electrician and also to get rid of the complainant, the opposite party issued a charge-sheet to the complainant on false and frivolous grounds. Without proper investigation and without taking express permission of the Tribunal, the opposite party dismissed the complainant from service from 10th December 1952. The complainant therefore filed the present application requesting that his dismissal was illegal and wrong and stating that he was entitled to be reinstated with all back pay and compensation and also to the promotion in the usual course.

3. The opposite party filed written statement Exhibit 4 contending *inter alia* that the application was bad in law and was not maintainable. They denied that the complainant was working as an Electrician and urged that he was an Electric Fitter and not an Electrician. They also denied that he was the next man to Ashu in seniority or in efficiency. They denied the allegation that the complainant gave an application on 15th July, 1952 or that the Manager granted it or that he passed an order on it that it was settled. It is then contended that A. K. Sen was transferred to Saltore Colliery in the ordinary course of business and the allegations and insinuations made by the complainant are false and mischievous. When the complainant gave an application on 12th August 1952, he was informed that there was no knowledge when Ashu would retire and that the question would be considered at the time of Ashu's retirement. The management denied that they

were annoyed with the complainant or took him to task. They denied that the charge-sheet issued against the complainant was false or frivolous or that it was issued in order that A. K. Sen may be appointed as Head Electrician and in order to get rid of the complainant. The management alleged that the complainant was charged with insubordination and intentional insult towards the engineer; he was found guilty of this charge and was therewith dismissed according to the standing orders. It was denied that proper investigations had not been made. In the end, the management urged that the application should be dismissed.

4. At the hearing, a preliminary point was taken before me against the maintainability of the present application. It was urged that the management had not committed breach of section 33 of the Industrial Disputes Act because they had not dismissed the complainant during the pendency of a Reference before the Tribunal. It is an admitted fact that the complainant was dismissed by the management by a letter dated 16th December 1952 for an incident which is said to have occurred on 10th December 1952. The complainant's case is that at that time, Reference No. 6 of 1952 was pending before this Tribunal and it was therefore incumbent on the management under Section 33 of the Industrial Disputes Act to obtain the express permission in writing from the Tribunal before dismissing the complainant. On the other hand, the management urged that at the relevant date, no reference was pending.

5. A dispute relating to paid holidays between 1078 collieries (including the present opposite party) and their workmen was referred for adjudication to this Tribunal by the Government of India, Ministry of Labour, by their Order No. LR. 27(365), dated 5th May 1952. My predecessor Mr. Varma retired on 31st May 1952. The post of Chairman of this Tribunal remained vacant till my appointment. On my appointment, the Government passed an order on 4th February 1953 referring the above dispute and other disputes which were then pending before this Tribunal for adjudication to this Tribunal.

6. The contention of Mr. Gupta on behalf of the opposite party is that in December 1952, there was no Chairman of this Tribunal and there was thus no pending reference before this Tribunal. He urged that the above reference should be said to have been pending only from 4th February 1953 when the Government made another order referring the pending disputes to this Tribunal. I do not agree with this contention. It may be noted at the outset that the order of reference by the Government on 5th May 1952 was not to Mr. S. P. Varma by name, but it was an order referring the dispute for adjudication to the Central Government Industrial Tribunal at Dhanbad. Similarly the order dated, 4th February 1953 was not an order referring the disputes for adjudication to me by name but it was an order referring the matter for adjudication to the Central Government Industrial Tribunal at Dhanbad. It is true that the post of the Chairman was vacant from 1st June 1952 to 6th February 1953; but that would not mean that there was no Tribunal at Dhanbad. Under Section 20(3) of the Industrial Disputes Act, the proceedings before a Tribunal are to be deemed to have commenced on the date of reference of dispute and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable. The proceedings before the Tribunal therefore commenced on the date of reference namely on 5th May 1952 and they have concluded only when an award was passed by me and it became enforceable. In my opinion, the retirement of Mr. Varma made no difference to the pendency of the Reference. It would not mean that the proceedings came to an end; because, as I said above, the Reference was not made to Mr. Varma by name but to the Tribunal and though Mr. Varma may have retired, the Tribunal did not cease to exist and the above dispute was pending before the Central Government Industrial Tribunal at Dhanbad even in December 1952, and the opposite party was not entitled to dismiss any workman without obtaining the permission of the Tribunal as required by Section 33 of the Industrial Disputes Act. Their dismissal of the complainant therefore amounted to a breach of Section 33 and the complainant is therefore entitled to file this application under Section 33A of the Industrial Disputes Act.

7. Coming to the merits of the case, the complainant was dismissed for an incident which is said to have occurred on 10th December 1952. According to the management, the complainant was guilty of insubordination and insulting the engineer in his office. It is said that on that day the engineer (Mr. Choudhuri) called the complainant and others to his office and told them that there were some unauthorised connections which had to be cut off. It is alleged that the complainant said that he would not do so and thereupon the engineer said that if he did not do it, he would himself have to do it. It is further alleged that on this the complainant became angry and abused and threatened the engineer. The engineer made a report about it (Exhibit 21) to the Manager and thereupon a charge sheet was served on the complainant, who denied the allegations. The management

urged that on enquiry it was found that the allegations were true and therefore they dismissed him.

8. On the other hand, the complainant alleges that on 10th December 1952 he was called by the engineer who told him to cut off some unauthorised connections. He thereupon told the engineer that on a previous occasion when he went to cut off some unauthorised connections, he was assaulted by the workmen and he therefore requested that either the engineer himself should go with him or that someone else should be sent with him. On this, the engineer told the complainant that he had become a great man and that is why he wanted a pcon to go with him. The complainant told the engineer that he should not use such language and at this the engineer got angry and pushed him out of his office. The complainant admits that a charge sheet was served on him but denies that any enquiry was held. He also alleges that he was falsely charged with the charges of insubordination and with abusing the engineer, because the management wanted to get rid of him as the management wanted to appoint one Mr. Sen as the Head Electrician.

9. It is an admitted fact that the complainant was working in the Electrical Department of the Saltore Colliery from about 1946. He says that he started as an Assistant Electrician and that in 1947 or thereabouts, he was promoted as an electrician. He has further said that one Ashu Mistry was the head electrician and that this Ashu was due to retire in July 1952 and at that time he (*i.e.* the complainant) was the next man in seniority and efficiency in that department in the colliery. The management allege that the complainant was not an electrician or Assistant Electrician but was only an electric fitter. They have urged in para. 7 of their written statement that in their letter of 15th August 1952 they had pointed out that the designation of the complainant was not Assistant Electrician but that he was only an electric fitter. It is further alleged in the written statement that a copy of the manager's letter was filed therewith and was marked 'A'. Annexure 'A' to the written statement, however, does not mention that the complainant's designation was not Assistant Electrician nor does it mention that he was an electric fitter. The complainant in his evidence (Exhibit 17) has stated that he was appointed as an Assistant Electrician but was later on promoted as Electrician. He is corroborated in this respect by several letters etc. of the management. Exhibit 12 is a certificate granted to the complainant by the then manager on 14th April 1950 mentioning therein that the complainant had been working in the colliery as electrician. Another manager of the colliery gave him a certificate Exhibit 13 on 16th July 1951 mentioning that the complainant had been working in the colliery for six years as an electrician in charge. In the letters Exhibits 24 and 25 written by the manager to the complainant on 4th August 1947 and 12th September 1947 respectively regarding the grant of leave, he was described as Assistant Electrician and Electrician respectively. The letter of appointment Exhibit 26 mentioned that the complainant was appointed as electrician. In the letter, Exhibit 20, dated 24th December 1952 written to the complainant by the Manager after he was dismissed, the complainant has been described as Ex-Electrician. From all these documents, it would be apparent that the complainant must have been appointed and designated as Assistant Electrician or Electrician.

10. As against this, the only evidence led on behalf of the management is the evidence of the engineer Mr. Choudhuri Exhibit 28, who said that the complainant was working as Electric Fitter. He could not explain as to why the complainant was described in the different letters as Assistant Electrician and Electrician. All that he said was that in the wage sheets the complainant was shown and described as an Electric Fitter. The management have filed the wage sheets Exhibits 22 and 23 for the week ending 29th December 1945 and some weeks of 1946. They have not filed wage sheets for any later period. Wage sheet Exhibit 22 does not contain the complainant's name. The wage sheet Exhibit 23 contains his name describing him as an Electric Fitter. But this only meant he was described as Electric Fitter in 1946. It would not mean that he was not designated as Assistant Electrician or an Electrician later on. I believe the complainant's case and hold that he was designated as Assistant Electrician and Electrician. I may however mention that what his designation was would not be very material for the purpose of this case.

11. It is an admitted fact that one Ashu Mistry was Head Electrician in this colliery. It is alleged by the complainant that this Ashu was due to retire in 1952 and that at that time he (*i.e.* the complainant) was the man next to him (Ashu) in seniority and efficiency and he therefore requested the management that after Ashu's retirement he should be promoted to Ashu's post. The management deny that the complainant was the man next in seniority and efficiency to Ashu. They have urged that one Abdul Aziz was senior to the complainant. It appears from the wage sheets Exhibits 22 and 23 that Abdul Aziz joined service from 27th December 1945 while the complainant joined service from 20th January 1946. This

however would not mean that Abdul Aziz would be senior to the complainant. It only means that Abdul Aziz has put in more service than the complainant. The wage sheet Exhibit 23 shows that Aziz was being paid at the rate of Rs 1-4-0 per day while the complainant was paid at the rate of Rs 1-8-0 per day. Though Abdul Aziz had joined service about 3 to 4 weeks before the complainant, the complainant was paid at a higher rate and this would *prima facie* mean that he was senior to Abdul Aziz. In this connection, I may also refer to letter Exhibit 16 addressed to the Union by several employees of the Electricity Department including the complainant and Abdul Aziz. In that letter, they urged that the complainant should be promoted in the place of Ashu Mistry and that Abdul Aziz should be promoted in the place of complainant. In other words, Abdul Aziz admitted that the complainant was senior to him. I am thus satisfied that in January 1952 the complainant was the man seniormost in the electrical department in the colliery next to Ashu Mistry.

12 Regarding efficiency we have no evidence. I may however mention that the management have not urged that the complainant was inefficient or that any one else was more efficient than the complainant. It may therefore be taken that the complainant was also the man next in efficiency to Ashu Mistry in 1952.

13 The complainant's allegation is that as Ashu was due to retire, he approached the management and requested that he should be promoted as head electrician ~~on the place~~ of Ashu Mistry when he retired, and that the management agreed to this. It is further alleged that subsequently to this one A K Sen was brought in to this colliery with a view to promoting him as Head Electrician in the place of Ashu Mistry. It is urged that it was a case of victimisation and that when the complainant protested against it the management put up a false charge against him and dismissed him.

14 So far as the charge of victimisation (in transferring Sen to this Colliery) is concerned I am not satisfied that it has been made out. It has been said that A K Sen was related to the engineer Mr Choudhuri or was his special favourite and that is why he was brought here. There is no evidence to show that Sen was a special favourite of Mr Choudhuri or that he was in any way related to or connected with him. I may then mention that the appointment of the Head Electrician was not within the power of the engineer, or for the matter of that even the manager. Of course, they could make a recommendation in the matter. It is however to be noted that A K Sen was already in the service of another colliery which was managed by the same Managing Agents as the present colliery. He was serving in the Standard Colliery. It is an admitted fact that the Standard Colliery was closed and thereupon Sen was transferred from the Standard Colliery to Mudidih Bhadruchawk Colliery and it was therefrom that he was transferred to the present colliery. This transfer was not and could not be effected by either the engineer (Mr Choudhuri) or the manager of this colliery. It could not therefore be said that Sen was appointed in this colliery because he was a favourite of Mr Choudhuri.

15 At this stage, I must mention that the management have every right to appoint or promote any one they think fit to a particular post, especially the higher or selection posts, and no one could claim it as of right, merely on the ground of seniority, provided they act bona fide. In the present case, Mr Sen was working in the Standard Colliery as Head Electrician. He was in the service of that colliery from 1942, that is, from before the complainant joined the present colliery in 1946. The Standard Colliery was closed down somewhere in about 1951. Thereupon Mr A K Sen was transferred to Mudidih Bhadruchawk colliery and it was from that colliery that he was transferred to the Saltore Colliery. Though the Standard Colliery belonged to the Standard Coal Co Ltd and the Saltore Colliery belongs to the Burakur Coal Co Ltd, we have to remember that both the collieries as well as Mudidih Bhadruchawk colliery are all under the management of Messrs Bird & Co Ltd. In the draft standing orders of the coal industry, a provision has been made that an employee could be transferred from one colliery to another under the same management, that is, under the same managing agents. In this connection, I may also refer to para 5 of the complaint filed by the complainant where he has mentioned that A K Sen was originally working as an electrician in the Standard Colliery of the opposite party and after the closure of the colliery was transferred to Mudidih Bhadruchawk, another colliery of the company (opposite party). This shows that the workmen in general and the complainant in particular recognised that the Standard Colliery, Mudidih Bhadruchawk colliery and the Saltore colliery were of common ownership, though technically they are not of common ownership but are of common management. If a person who had been working in a sister colliery as electrician since 1942 was proposed to be appointed as Head Electrician in the present colliery and

thereby the complainant who was in service of the colliery since 1946 lost a chance of promotion, it could not necessarily be said to be a case of victimisation or favouritism, especially when we remember that the Standard Colliery in which Mr. Sen was serving had to be closed down (and the closure thereof has been held by this Tribunal to be justified in the award passed in Reference No. 2 of 1952). I therefore hold that the complainant's grievance that A. K. Sen's transfer to this colliery was a case of victimisation cannot be accepted. It is true that by A. K. Sen's transfer, the complainant may have lost a chance of promotion to which he may have been looking up to; but that by itself would not be sufficient to hold that the management's action was improper.

16. I may mention at this stage that strictly speaking the question whether the complainant was entitled to promotion or not is not directly in issue in the present case. The question at issue is whether his dismissal was proper; but for considering and deciding the bona fides of the management in dismissing the complainant, the above facts have to be considered and that is why I have discussed them. As I said above, the action of the management in appointing or transferring A. K. Sen to this colliery does not appear to me to be malafide. It however appears that the workmen in general and the complainant in particular did not like this. It appears that when A. K. Sen was transferred to this colliery, the workmen approached the workmen's union by their letter Exhibit 16, dated 13th August 1952. Thereupon the President of the Union wrote a letter to the Manager. Before this, the complainant had already written a letter to the Manager of the colliery on 12th August 1952 requesting that he should be promoted to the post of Ashu Mistry when he retired and sent this letter through the Labour Union. The complainant's allegation is that on receipt of this letter, the manager called him and threatened him for having approached the Union. He thereupon went to the Union and complained to them about the manager's threats. Thereupon the Union President wrote a letter Exhibit 15 to the Manager informing him about the complaint made by the complainant. The manager's reply to this is Exhibit 17 wherein he stated that the allegations were false, and called upon the President to withdraw the allegations. It is alleged by the complainant that after this he was called by the manager in his office in the presence of the union officials and at that time also the manager threatened and assaulted him. This is referred to by the Union President in his letter, dated 15th August 1952/18th August 1952 produced as Annexure 'E' to the complaint. It further appears that even after this there was further correspondence and we find that on 17th September 1952 the Union President wrote letter Exhibit 18 stating that a new man Shri A. K. Sen was working at the colliery as Head Electrician and that he was designated as Head Electrician as soon as Ashu went on leave and the Union President was of the opinion that the complainant should also be designated as Head Electrician. The manager's reply to this is Exhibit 19, dated 18th September 1952 stating that he could not break the company's rules and that when a person was transferred from one colliery to another his designation was not changed, meaning thereby that A. K. Sen was designated as Head Electrician because that was his designation in the Standard Colliery.

17. It would thus appear that though the management were right in transferring A. K. Sen to this colliery and in their intention to promote him to the post of Head Electrician in the place of Ashu Mistry when the latter retired, the workmen in general and the complainant in particular were not satisfied about it and were agitating in the matter. In my opinion, it was because of this background that the incident of 10th December 1952 has been grossly exaggerated and has been made a handle by the management for taking action against the complainant.

18. I have already mentioned above the allegations of the two parties as to what happened on that day. I am not prepared to believe that the incident took place as alleged by the engineer Mr. Choudhuri. According to Mr. Choudhuri, he called Ashu Mistry, the complainant, and others to his office and told them that unauthorised connections had to be cut off and thereupon the complainant stated that he would not do so. It is further alleged that on this Mr. Choudhuri said that if the complainant did not do it, he would have to do it himself and thereupon the complainant became angry and abused and threatened him (Mr. Choudhuri). I do not think it natural that the complainant would get angry merely on the engineer telling him that if the complainant did not cut off the connections, the engineer would have himself to do so. The complainant's allegations that he requested that someone should accompany him when he went to cut the connections and thereupon the engineer told him that the complainant had become a great man and wanted a peon to accompany him appear to me to be more probable. Probably when the engineer said this, the complainant must not have liked what the engineer had told him, especially when we remember the background about the appointment of A. K. Sen to this colliery by which the complainant believed that his chance of promotion was being interfered with. This

may have led to some exchange of words between the engineer and the complainant. But I do not believe the allegations that the complainant used abuses or showed insubordination.

19. It has been urged on behalf of the management that in a case of this type, the Tribunal is not to sit in appeal against the decision of the management and all that it is to see is that there was some evidence from which the management could come to the conclusion that the charge sheet against the complainant was proved. In the present case, there was a statement signed by several witnesses supporting the allegation of engineer Mr. Choudhuri. It is true that the Tribunal is not to sit in appeal against the decision of the management; but at the same time, the Tribunal has to be satisfied about the bonafides of the action of the management. I may mention that I am not satisfied about the bona fides of the management. It is true that the management allege that they had before it a written statement signed by several persons supporting the allegations of the engineer and this statement has been produced by them at serial No. 5 with their list Exhibit 10. In this connection, the evidence of the engineer Exhibit 28 shows that after the incident took place, he wrote his statement and gave it to the manager. This statement has not been produced before the Tribunal. It is then said that the manager called the witnesses and recorded their statements. One Arun Das wrote out one common statement in Bengali and this statement was signed by him and by other witnesses. It was after this that a charge sheet was served on the complainant. Admittedly no statements were recorded after the charge sheet was served on the complainant or after he replied to it. Now so far as the alleged statement of the different witnesses is concerned, it may be noted that it does not bear any date nor does it bear the signature of the officer in whose presence it was taken. The signatures of the different witnesses appear to be in different ink showing that the signatures must have been taken at different times. In other words, there is nothing to show that this statement was recorded on 10th December 1952 nor is there anything to show that it was recorded by the manager nor is there anything to show that all the persons who have signed the statement were present on 10th December 1952 and signed them at that very time. Neither the manager nor any of the persons who have signed the above statements has been examined as a witness in the present case. There is nothing to show that the witnesses who signed it, properly understood what was written therein. It may be noted that all the persons who have signed the statement were subordinates of Mr. Choudhuri and unless their testimony was tested by cross-examination, it would not be proper to rely on a statement on which their signatures may have been obtained. They may even have signed it at the instance of Mr. Choudhuri. Usually cases of this type used to be put up before the Pit Committee; but the present case was not so put up. All these facts taken together go to show that the management and the engineer exaggerated a small incident with a view to take advantage thereof to get rid of the complainant who was agitating against the management's action in transferring A. K. Sen to this colliery. In other words, their action was not bonafide.

20. They did not hold a proper enquiry. According to the management's case, a written statement was already obtained from some persons before a charge sheet was served on the complainant. This means that the management had already been prejudiced against the complainant and wanted to dismiss him. Otherwise the normal course would have been that when the engineer made a complaint in the matter, a charge sheet should have been served on the complainant and if he denied the allegations, then the statements of all persons who were present should have been recorded to satisfy the management whether the allegations made by the engineer were correct. In the present case, however, the management had already obtained a written statement of some witnesses before serving a charge sheet on the complainant. Mr. Choudhuri went to the length of saying that when the above statements were obtained from the witnesses, the complainant was present. He had at first denied that fact. If the complainant was present at the time, he would have also been apprised about the incident and his statement also would have been recorded. No such thing was done. It shows that the complainant must not have been present at the time. This also shows the want of bona fides on the part of Mr. Choudhuri, as much as he is not stating the whole truth.

21. On the whole, the order of the management dismissing the complainant was not bonafide and the complainant must be reinstated in the post which he was holding; but he is not entitled, as I said above, to the post of Head Electrician. In the result, I hold that the order of dismissal of the complainant is not proper and it is therefore set aside. The complainant should be reinstated in the post which he was holding in 1952 and should be paid the wages and would be entitled to all the benefits as if he was in service all along. Arrears of wages etc. should

be paid within one month from the award becoming enforceable I pass my award accordingly.

The 9th January, 1954.

(Sd) L.P. DAVE, Chairman.

Central Government's Industrial Tribunal, Dhanbad.

[No LR.2(365).]

S.R.O. 363.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Madras in the dispute between the employers in relation to the Indian Overseas Bank Ltd, Madras and their workmen

BEFORE THE INDUSTRIAL TRIBUNAL MADRAS

PRESENT

Sri S Narasimhulu

Madras, the 8th January, 1954

INDUSTRIAL DISPUTE No 29 OF 1953 (CENTRAL)

Between—

The workers, represented by the Indian Overseas Bank Employees' Union 53 Velaiya Street, Madras 1

AND

The Management of the Indian Overseas Bank Ltd, Madras

This dispute coming on before me for final enquiry on 30th December, 1953, 31st December, 1953, and 2nd January, 1954, in the presence of Sri G. Nagiah, Secretary of the Indian Overseas Bank Employees' Union, for the workers, and Sri K. S. Naidu, Advocate, for the management, after perusing the reference made by the Government of India, the parties and the evidence adduced by them and on hearing the parties and the evidence advanced by them and having stood over for consideration till the following

AWARD

A dispute having arisen between the workmen and the management of the Indian Overseas Bank Ltd, Madras as regards the discharge of 7 of the Bank's workmen and the grant of increment to the workmen for the year 1950 the Government of India referred it by means of LR No 100 (94) dated 23rd October 1953, for my adjudication under Section 7 and clause (c) of Sub-section (1) of Section 10 of the Industrial Disputes (Central) Act XIV of 1947. On receipt of notice of this reference from me, the Indian Overseas Bank Employees' Union filed its claims-statement and in reply to it the management of the Bank filed its counter-statement. In the light of these pleadings and the reference of the Indian Government the following issues were settled for determination in the case at the preliminary enquiry held for the purpose on 15th December 1953

2 Issues.

- (1) Whether the termination of the services of (1) Sarvashri N. A. R. K. Arunachalam Chettiar, (2) S Ayyaswamy (3) S Loganathan, (4) K Kasiviswanathan (5) T Meenakshisundaram (6) P Veeraswamy and (7) M R Meeriah from the Bank was justified?
- (2) If not, to what relief is each of the workers who were discharged without justification entitled?
- (3) Whether the workers of the Bank are not entitled to increment for the year 1950 by virtue of the interim award made by Sri Sen on 2nd December, 1949?

3 When the matter came up for enquiry on 23rd December 1953, the Union applied for an adjournment till 26th December 1953, with the consent of the Management but on 26th December 1953, the Management in turn got it adjourned to 30th December 1953, with the agreement of the Union. Finally, on 30th December 1953, the Management marked 26 documents, Exs. M. 1 to M. 26, and examined 2 witnesses, M.Ws 1 and 2, in proof of its case against which the Union contented itself with marking some documents, Exs. W. 1 to W. 18 without adducing any oral evidence. The case was, therefore, closed and arguments were heard on either side the same day. In the course of their arguments the parties preferred to have the question of increment covered by issue No 3 settled by themselves and took a day's time to file a memorandum of settlement. On 31st December 1953 however none appeared on behalf of the Union or the workers and the case was therefore adjourned to 2nd January 1954 the next working day, when the

parties appeared only to state that their attempt at settlement on the question of increment had failed and to argue on the question after marking Ex. W. 19 on behalf of the workers and Ex. M. 27, for the Management.

4. Issue No. 1—Of the 7 workers to whom this issue relates, the case of the first 3, Sri Arunachalam Chettiar, Sri Ayyaswami and Sri Loganathan is practically identical and may, therefore, be dealt with together. These 3 were clerks of the Bank whose employment was terminated for similar reasons at about the same time by means of the orders Exs. W. 5, W. 6 and M. 6 (e), after they had put in service of 3 to 4 years.

5. The orders served on Sri Arunachalam and Sri Ayyaswami are both dated 17th September 1953, and couched in the same language. They state that to meet the situation created by the award of the All India Industrial Tribunal (Bank Disputes), the Management regrets to have to terminate the services of the said clerks with immediate effect but offers to pay them a month's salary in lieu of notice besides their salary, as an *ex-gratia* payment, for the remaining days of the current month. The order by which Sri Loganathan was discharged, Ex. M. 6 (e) dated 15th November 1950, is also in like terms. After stating that to meet the situation created by the said award, it has been found necessary to effect economy by retrenchment of staff and other ways, the order directs a notice terminating the service of the clerk in question to be sent to him with a note that he would be paid a month's salary in lieu of notice apart from his salary for the remaining days of the month of November as an *ex-gratia* payment.

6. The Union contends that there was really no case for retrenchment, that even if there was one, the Management should have followed the principle of 'last in first out' and that the clerks in question were all dismissed just to create a feeling of insecurity in the minds of the employees and disrupt their trade union movement. On the other hand, the Management urges that it is one of the C class banks for whom the (Sen) award recognised the need for rationalisation and that the clerks in question had to be discharged as it was felt necessary to retrench the staff to implement the award. The Management frankly concedes that the principle of 'last come, first go' was not observed in the case of these employees, but seeks to justify its action on the score that the award contains no direction to retrench only the latest recruits and that when retrenchment has to be effected, it is but reasonable that only those who are found unfit or inefficient should be sent away and that all the three clerks we are now concerned with were retrenched on the strength of reports received against them from the agents of the branches where they were working in compliance with the circular letter issued by the Management regarding it.

7. Now, the principles governing cases of retrenchment are well-settled. They have been clearly laid down by the Labour Appellate Tribunal of India in the leading case of the *Viswamitra Press* reported at page 181 of 1952-I-Labour Law Journal, thus :

"The first question to be considered by a tribunal is whether a case for retrenchment has been established. On this question, the onus would be on the management. If it fails, its case would end there. If, however, the management is able to establish a case for retrenchment, either on the ground of rationalisation, economy or other sufficient causes, the next question to consider would be the extent of retrenchment. Here the matter has to be considered under two sub-heads, namely (1) when the action of the management in retrenching the workmen is *bona fide* and (2) where in determining the extent of retrenchment, it acts partially on extraneous considerations or on improper motives.

"It is the *prima facie* right of the management to determine its labour force and the management would be the best judge to determine the number of workmen who would become surplus on the ground of rationalisation, economy or other reasons on which retrenchment can be sustained. Where, in effecting the retrenchment, the management acts in a *bona fide* manner, the number retrenched by it are to be accepted. It is not possible or desirable to give an exhaustive list of the cases that would be covered by the second class. Increase of work-load on the workmen retained would be an instance of extraneous consideration. Similarly victimisation or unfair labour practice in effecting retrenchment would be an instance of improper motive. When the management is influenced by extraneous considerations or improper motives, the tribunal must scrutinise the matter with great

circumspection and must confine the number of retrenchment strictly within the limits of actual requirement. In such cases, the management must justify by evidence the extent of the retrenchment."

These principles have been reiterated by different benches of the same Appellate Tribunal in numerous subsequent decisions, the latest of them being those reported at 1953-I-Labour Law Journal at page 45, 1953-I-Labour Law Journal at page 85 and 1953-I-Labour Law Journal at page 366.

8. Now, in justification of the retrenchment, which according to the Management in the present case, became necessary and was permitted by the (Sen) award, Exs. M. 1 to M. 6 are relied upon. Ex. M. 1 is an extract of the minutes of the Banks' Committee meeting held on 25th May 1950. It goes to show that a note regarding the closing of the Bank's branches at Vellore, Purusawalkam and Tirunelveli junction was considered and approved by the Committee. Exs. M. 2 to M. 4 are all copies of the communications sent to the said 3 branch offices directing notices to be issued to the clerical and cash department and the subordinate members of the offices on 15th October 1950, that their services would not be required beyond that date and as a matter of grace they would be paid their salary and allowance till 30th November 1950. Then, Ex. M. 5 is a statement showing the losses sustained by the 3 branch offices continuously from 1946 to 1950 which necessitated the closure of those offices. And lastly, Ex. M. 6 is a confidential circular issued by the Management to all the agents of its branches in India. It is dated 10th October 1950, just like Exs. M. 2 to M. 4. After referring to the (Sen) award and the need to meet heavy expenses in respect of increased salaries, allowances, etc., as a result of the award, it points out that the additional costs could be met only by increasing the income and earning power and by retrenchment and curtailment of the superfluous staff, and concludes with a request to the agents to loyally co-operate with the Management in these matters and furnish each a list of the clerks and subordinate members of their staff who may be discharged for unsatisfactory work and another list of the rest of their staff with a note about those whose work has been outstanding.

9. The above documents, particularly Exs. M. 1 to M. 4, bear out the Management's contention that there was sufficient necessity for retrenchment in the Bank. But Exs. M. 23 to M. 25, the documents filed to indicate the extent of the retrenchment, relate only to the establishments of the 3 branch offices that were closed down. They doubtless go to show that altogether 3 officers, 3 cashiers, 8 clerks, 1 shroff, 6 messengers and 4 watchmen had to be retrenched by the closure of the 3 branches. But they also serve to show that all these employees excepting 2 watchmen have been provided with employment in some other branches of the Bank. What is more, there is nothing to show that the discharge of the 3 clerks now in dispute was necessitated by the closure of 3 of the Bank's branches and much less, that the 3 clerks were all junior to those serving in the 3 branches who have been absorbed in the other branches of the Bank. Apparently it is to overcome this difficulty that the Management seeks to justify the discharge of the 3 clerks in dispute on the strength of unsatisfactory reports about their work and conduct. But the principles to be observed in such a case are different from those applicable to retrenchment. Rules of natural justice requires that persons accused of defective work or conduct should be told of it and given an opportunity of either disproving it or of avoiding the punishment proposed for it.

10. The only evidence adduced about the 3 clerks in question being unfit for continuance in employment is Exs. M. 6 (a) to M. 6 (d). Ex. M. 6 (a) is a confidential letter of the agent of the Bank's branch at Madras dated 26th October 1950, sent in reply to the confidential circular, Ex. M. 6. It shows that the agent was not satisfied with the clerks, Sri Ayyaswami and Sri Arunachalam. The remarks made by him against them are these:—"Mr. Ayyaswami joined service on 19th November 1947. He is not quick and up to date in his work. He is lazy and is not earnest about the work allotted to him. He often commits mistakes in his work and shows no disposition to admit them. In spite of warnings he does not show any improvement." and "Mr. N. A. R. K. Arunachalam joined service on 9th February 1948. He is easy-going, takes no interest in his work and is very careless. He is not obedient and does not heed to his superiors. He is moreover slow and dull and will not prove useful to us." Ex. M. 6 (b) is a memorandum issued to Sri Arunachalam on 24th July 1950, informing him that his probationary period had been extended by 3 months on account of the agent's unfavourable report. And Ex. M. 6 (c) is a similar memorandum issued to Sri Ayyaswami on 22nd July 1950, telling him that in view of the agent's unfavourable report on his neatness of execution, his probation period had been extended by 3 months with a warning to show improvement in his writing. And Ex. M. 6 (d) is a letter

of the agent of the Cannanore branch of the Bank dated 16th October 1950, containing his adverse remarks against the clerk, Sri Loganathan, to the effect that he had been transferred to that office very recently on 26th September 1950, that in the clerk's short period at that office he found the clerk much below his expectation, considering the service the clerk had put in the Bank, that he found the clerk quite inexperienced and even not much enthusiastic in picking up work, that he was also a little bit slow in his execution of work, that the worthiness of his retention in service depended upon his all round improvements and that at that stage he did not appear to be a much promising employee.'

11. Apparently Ex. M. 6 (c) relate to a period anterior to the date of Exs. M. 6(b) and M. 6 and could only be relied upon as showing that the 2 clerks to whom they refer were still on probation at the time of their discharge, while the third clerk, Sri Loganathan, had been confirmed by them. The documents which are of importance for our purpose are Exs. M. 5, W. 6 and M. 6 (e) by which the 3 clerks were discharged from service. They do not make any reference to the unsatisfactory work or conduct of the 3 clerks mentioned in Exs. M. 6 (a) and M. 6 (d) but merely state that the clerks had to be discharged to meet the situation created by the award. In view of this the Union would be justified in contending that when the Management decided upon discharging the 3 clerks it preferred to base it on the situation created by the award (of effecting economies by way of retrenchment of staff and enhancement of earning power) and not on the strength of the agent's adverse reports against the clerks. In such a case the management could only treat the 3 clerks as having been retrenched and should have re-entertained them as soon as vacancies arose, in the same manner as it had done in the case of the clerical staff affected by the closure of the above said branches at Tirunelveli, Purasawalkam and Vellore. Ex. W. 1 discloses that besides the absorption of the clerks of the aforesaid 3 branches, the Management has appointed quite a large number of other persons as clerks in 1953 without taking back the 3 retrenched clerks in question. It looks as if the Management is resorting to the confidential reports sent against these clerks merely to avoid any inference of unfair labour practice from its failure to re-entertain the 3 retrenched clerks before employing their juniors.

12. Assuming for a moment that those 3 clerks were discharged for unsatisfactory work or conduct on the basis of their agents' reports, natural justice requires that the Management should have told the clerks about the adverse remarks in the reports and called upon them to show cause why disciplinary action of a specified kind should not be taken against them on the strength of those reports. Something in the nature of charge-sheets should have been served on the clerks concerned. And if they did not plead guilty to any of those charges, they should have been permitted to disprove the truth of the Agents' adverse remarks by their cross-examining the agents, if so desired, and by means of evidence on their own behalf. They should at least have been allowed to adduce mitigating circumstances to avoid any drastic punishment like a summary discharge or dismissal. Failure to do so utterly vitiates the action taken by the Management and makes it impossible to accept it. I am therefore constrained to hold that the termination of the services of the aforesaid 3 clerks without any right of reemployment was not at all justified.

13. The next employee covered by the first issue, Sri Kasiviswanathan, appears to have been appointed by the Bank on 20th December 1947, at Madras and later transferred to Tuticorin where he was discharged from the service on 30th July 1951 by means of the order Ex. W. 9. This order refers to 4 leave applications of the clerk dated 27th June 1951, 4th July 1951, 9th July 1951 and 13th July 1951, and enclosure of a certificate from the Government Medical Officer, and then states that the Central Office of the Bank had rejected the applications and felt reluctantly compelled to terminate his services immediately in view of the highly contagious disease he was suffering from. But the medical certificate, Ex. M. 7, which the Management has filed in proof of the disease merely shows that the clerk was suffering from Hansen's disease (skin clipping for lepra Bacillae-positive) and that the medical officer who gave the certificate recommended 3 months leave for the treatment of the disease. It contains nothing to warrant the Management's contention that the disease was acute or its statement in Ex. W. 9 that the disease was highly contagious. Nor has the Management been able to show me any authority for treating the disease described in Ex. M. 7 as contagious. This apart, Ex. M. 10, another certificate of the same medical officer who gave Ex. M. 7, serves to show that after a subsequent examination of the clerk concerned on 7th November 1951, and reading of the report of the Civil Assistant Surgeon in charge of Leprosy Department of the hospital to the effect that in his opinion the clerk's case was one of no-offensive neutral type, the medical

officer concurred with that opinion and declared the clerk fit to do his duties, though by way of caution he advised that the clerk should continue regular treatment. The Union has gone further and filed Ex. W. 10, another certificate of the same medical officer dated 13th February 1952, to show that the clerk in question had been treated in the hospital for neutral type of leprosy for the past 4 months with sulphones and injections, that repeated smears and skin slips were found to be negative and that in the opinion of the medical officer the disease had been arrested and the individual concerned was then free from the disease and fit to join duty without detriment to his colleagues. When this certificate was produced by the clerk with a request for reinstatement, he merely got the reply Ex. W. 11 dated 14th March 1952, from the Management regretting its inability to offer him an appointment in the Bank as it was not its practice to take back members that had once left the Bank. It is rather difficult to appreciate the treatment meted out to this clerk. According to the Management's own pleading in the counter-statement, it was really an unfortunate case. And yet the Management wants to say that it had no other alternative but to discharge the clerk and that too on the strength of nothing beyond what has been stated above. I think I must hold the discharge of even this clerk as unsustainable.

14. The fifth clerk whose discharge is in dispute, Sri T. Meenakshisundaram, admittedly joined the Bank's service as a clerk in 1946, and volunteered to serve in its branch office at Singapore for a period of 3 years from 28th July, 1949 on apparently better emoluments. The Management pleads that despite the said contract this clerk applied by means of Ex. M. 11 for 3 months' leave in June, 1951 on the ground of his father's illness as disclosed by the telegram, Ex. M. 12, that though the clerk was not entitled to any home leave before completion of the 3 years of service over-seas, he was granted leave as a special case on the understanding that he should report himself to duty at the Bank's Singapore Branch on the expiry of his leave, that instead of doing so, the clerk applied while he was on leave in India, by way of Ex. M. 14 dated 7th September 1951, for a transfer to any Tamilnad branch on the ground of his own illness and on the plea that the Singapore climate did not suit him, that the request was refused by the Management as it had reasons to believe that the clerk was merely malingering and the excuse of unsuitability of Singapore climate was an after-thought, that the clerk was served with a note, Ex. M. 26 dated 4th October 1951, informing him about the Management's inability to comply with his request and giving him an opportunity to resign in view of the medical certificate that he would not be fit to go over-seas failing which he would have to be treated as having left the Bank's services. The Union has nothing to say against this case except to plead that according to Exs. W. 12 and W. 13 (=M.15), certificates of medical practitioners at Devakottai where the clerk was spending his leave, he was suffering from sprue and was undergoing treatment for it and that his return to Malaya would bring about a relapse of the disease. I am unable to see how these certificates can help the clerk to avoid the only alternative which he left to the Management, namely, of either discharging him for his unwillingness or inability to go back and serve at Singapore till the 3 years contract period was over or to resign his post and quit the Bank's service of his own accord. I consider that the Management's action in treating him as having left its service by his failure to join duty at the end of the leave period sanctioned to him was just and must be upheld. The clerk can have no reason to complain of harsh treatment against the Management in his case particularly in view of his having received return passage money to which he would not be entitled unless he had served at least 3 years over-seas as indicated in Ex. M. 13.

15. This brings us to the case of Sri P. Veeraswamy who joined the Bank as an attender in about 1941 and was discharged on 10th November 1951, for failure to join duty on the expiry of the leave granted to him. The Management's case in regard to him is that his leave record, Ex. W. 21, was throughout bad. On 17th January 1950, he took 3 months leave to attend to his sick father, 8 days of which period being on loss of pay. Again on 25th August 1950, he got 2 months' on medical grounds, half of which being on loss of pay. Then again on 22nd June 1951, he obtained 15 days leave to attend to his sick father and then applied for 15 days extension on loss of pay. Lastly on 24th September 1951, he applied for 6 months' leave but was granted only a month's leave. As he failed to join duty on the expiry of that leave, he had to be discharged by the order, Ex. M. 16, dated 10th November 1951. All that the Union has chosen to urge in favour of this attender is that according to Ex. W. 3 dated 24th April 1951, a certificate of a medical practitioner at Madras, he was suffering from hydrocele and wanted to be operated for it at his native place and for that purpose was recommended a long leave for 6 months, that the Management was unfair to him in granting only one month's leave and discharging him from service for his failure to join duty after

that period and refusing by Ex. W. 4 to reinstate him in spite of his letter, Ex. M. 19, stating that when he got the Bank's intimation to join duty he was on sick-bed. After due consideration, I find myself unable to question the Management's action in this case also. If the attender was really bed-ridden at the time of his receiving the Bank's letter to join duty on 24th October 1951, he could have informed the Bank about it immediately instead of waiting till 27th February 1952, and then asking for reinstatement, especially when the Bank had refused to grant him anything more than one month's leave in spite of his having asked for 6 months' leave on the strength of a medical man's report.

16. Coming to the last employee, Sri M. R. Meeraiah, he joined the Bank's service as a peon in 1944 and was treated as having left the service on 21st September 1951, for failure to report himself to duty on the expiry of the leave granted to him as per Ex. W. 2. The Management seeks to justify this discharge on the ground that his leave record, Ex. M. 22, was very bad, that he was granted 7 days leave from 30th August 1951, on loss of pay with a warning that he should not apply for any extension, that in spite of this he applied for extension upto 22nd September 1951, on the score of his wife's illness and that the leave had to be refused and he was asked to report himself to duty immediately which he failed to do and let no alternative to the Management but to terminate his services. The Management goes further and files Exs. M. 18, M. 19 and M. 20 to show that his failure to join duty on 21st September 1951, was the second of its kind and his request for reinstatement could not therefore be entertained and that in acceptance of this petition he had finally applied on 30th January 1951, for a memorandum of service for the period he had served the institution apparently to join some other institution and such a memorandum was granted to him on 17th December 1951. As against this, the Union has nothing more than to urge that the peon had to apply for an extension from Hyderabad owing to his wife's illness there. I fear this excuse cannot be accepted as a sufficient reason for his failure to join duty in spite of the warning which he had, that the leave already granted should not be extended beyond 6th September 1951. The fact that he has taken a memorandum of service from the Bank goes to show that he was himself satisfied with the justification for his discharge and preferred to seek employment elsewhere on the strength of the memorandum. I am therefore inclined to uphold his discharge also. I accordingly find on the first issue that the termination of the services of Sris Arunachalam Chettiar, Ayyaswamy, Loganathan and Kasiviswanathan was not justified and is therefore liable to be set aside while the discharge of Sri Meenakshisundaram, Veeraswamy and Meeraiah was justified and should therefore be allowed to stand undisturbed.

17. Issue No. 2.—If the finding given above is correct, it follows that Sri Meenakshisundaram, Veeraswamy and Meeraiah are not entitled to be reinstated or compensated in any way for their discharge while the other 4 employees mentioned above have a right to relief against their discharge which under the circumstances of the case I must hold to be their reinstatement in service. The only question which requires serious consideration in the case of these 4 emp'oyees is whether they should have their salary and allowances from the time of their discharge upto the date of their reinstatement. The Management contends that Sri Ayyaswamy is employed as an Executive Officer of a temple under the Hindu Religious and Charitable Endowments Board and this is not disputed by the Union. As regards the other 3 employees whose discharge has been set aside, there is no proof of their being unemployed after their discharge. In view of this and the circumstances in which they have been discharged, I consider that they are not entitled to any remuneration from the date of their discharge till their reinstatement in service. The Union has doubtless submitted two affidavits to show that Sri Arunachalam has remained unemployed upto now and that Sri Loganathan is also unemployed except for 3 short periods of 25th January 1951, to 31st March 1951, 30th July 1951, to 31st May 1952, and 1st February 1953 to 11th April 1953. But they cannot be relied upon as they have been sent to me by post after the enquiry and the arguments in the case were closed and that too, without any direction from me and after the Union had stated at the enquiry that it had no further evidence to adduce in the case than the documents marked for it. Acceptance of affidavits in such circumstance would be improper, more so as it deprives the opposite party of its right to cross-examine the deponents regarding the veracity and reliability of their averments in the affidavits. My finding on the second issue therefore is that Sris Arunachalam Chettiar, Ayyaswamy, Loganathan and Kasiviswanathan are only entitled to be taken back into service on the same terms as they were enjoying at the time of their discharge, within 30 days of the publication of this award, treating the intervening period as leave on loss of pay so as not to affect continuity of their service and such other rights as they possessed at the time of their discharge.

18. Issue No. 3.—What remains is only the worker's claim for increment due on 1st April 1950, up to 1st February 1951, when the final award of the (Sen) Tribunal was implemented by the Bank. The Management candidly concedes that the increment in question has not been paid but seeks to justify it on the ground that the Tribunal gave an interim award on 2nd December 1949, providing for temporary relief regarding salary and allowance from 1st June 1949, by virtue of which most of the clerks of the Bank got much more than their relative annual increments and even if those increments had been granted on 1st April 1950 they would have all merged in the interim relief awarded by the Tribunal. I see some force in this contention. But it could be applied only to those who actually got the benefit of the interim Award. Admittedly this benefit was given by the Bank to only the employees of its branches in Part 'A' States and that too, to only employees whose salary and dearness allowance together fell short of the minimum allowed under the interim award, *viz.*, Rs. 80 in the case of clerks and Rs. 38 in the case of subordinate staff in the city of Madras, and Rs. 76 in the case of clerks and Rs. 35/- in the case of subordinate staff outside the city of Madras, as seen from Ex. M. 27. In view of this, such of the clerks and subordinate staff as were getting on 1st April 1950, more than these minimum amounts and could not for that reason reap any benefit from the interim award as well as those for whom that award was not applied should have the increments that would have accrued due to them on 1st April 1950, till 1st February 1951, when the new revised scale of salaries and increments granted under the final award was adopted by the Bank in question. The learned advocate for the Management pleads that though the Tribunal gave the Banks time till 13th February 1951, to implement its final award, the Bank in question gave effect to the award on 1st February 1951, 12 days earlier than the date fixed, and that the additional income which the employees of the Bank thus derived should be allowed to be deducted from the quantum of increments now granted to them for the period 1st April 1950, to 1st February 1951. I have carefully considered this contention but feel that in the absence of any evidence to show that the earlier implementation of the final award by the Bank in question was done with the object, if not on the condition, that the extra benefit thereby conferred should go in reduction of the increments which some of the employees are now found entitled to claim. I would therefore find on the 3rd issue that all the employees of the Bank in question in both part A and part B states of the Indian Union shall have the increments that would have accrued due to them on 1st April 1950, till 1st February 1951, except those in part A states whose salary and dearness allowance was less than the minimum amounts fixed by the said interim award and who for that reason got that minimum from the Bank in question from 1st June 1949.

19. In the result there will be an award according to the findings given above and it will be submitted to the Union Government with a note that it shall become enforceable on the expiry of 30 days from the date of its publication in the Official Gazette and that the parties shall bear their own costs.

MADRAS;

Dated, the 8th January 1954.

[S. NARASIMHULU],
Industrial Tribunal Madras.

LIST OF EXHIBITS MARKED

If for the workers—

W. 1	Minutes of conciliation proceedings held under Section 12 of the Industrial Disputes Act, 1947, by the Regional Labour Commissioner (Central), Madras, on 31-1-53.
W. 2	:	:	22-9-51	Letter from the Bank to M. R. Meeraiah.
W. 3	:	:	24-9-51	Note of Dr. U. Srinivasa Rao, M.B.B.S., about Sri P. Veeraswami.
W. 4	.	.	10-3-52	Letter of the Indian Overseas Bank Committee to Sri P. Veeraswami.
W. 5	.	.	17-11-53	Letter of the Bank to Mr. N. A. R. K. Arunachalam.
W. 6	.	.	17-11-53	Letter of the Bank to Mr. S. Ayyaswamy.
W. 7	.	.	18-11-53	Letter of the Bank to S. Loganathan.
W. 8	Letter from Veeraswami to the Bank.
W. 9	.	.	30-7-53	Letter from the Agent of the Tuticorin Branch of the Bank to K. Kasiviswanathan.
W. 10	.	.	13-2-52	Certificate of Dr. V. Kuruvilla, M.B.B.S., regarding Kasiviswanathan.

W. 11	:	:	14-2-52	Letter from the Bank to Kasiviswanathan.
W. 12	:	:	23-9-51	Certificate of Dr. P. S. Vaidyanathan, Civil Assistant Surgeon, regarding T. Meenakshisundaram.
W. 13	:	:	7-9-51	Certificate of Captain G. D. Ebenezer, I.A.M.C. (Retd.), Devakottai, regarding T. Meenakshisundaram.
W. 14	:	:	.	List of persons appointed subsequent to May 1952 in the Bank.
W. 15	:	:	.	Balance-sheet as on 31-12-1949.
W. 16	:	:	...	Balance-sheet of the Bank as on 31-12-1950.
W. 17	:	:	..	Balance-sheet of the Bank as on 31-12-1951.
W. 18	:	:	..	Balance-sheet of the Bank as on 31-12-1952.
W. 19	:	:	14-2-1951	Circular of the Bank to all branch offices.

For the Management

M. 1	:	:	..	Certified extract from the Minutes of the Committee Meeting held on 25-9-50.
M. 2	:	:	10-10-50	Copy of Central Office letter to the Gudiyatham Branch.
M. 3	:	:	10-10-50	Copy of Central Office letter to the Tirunelveli Junction branch.
M. 4	:	:	10-10-50	Copy of Central Office letter to Madras Branch (Purasawalkam).
M. 5	:	:	...	Statement of loss incurred by Purasawalkam, Tirunelveli and Vellore branch pay offices.
M. 6	:	:	10-10-50	Copy of circular letter of Mr. L. C. Williams to all Indian Branch Agents.
M. 6(a)	:	:	24-10-50	Madras Branch Agent's letter to Central Office.
M. 6(b)	:	:	24-7-50	Copy of Central Office letter to Madras Branch.
M. 6(c)	:	:	22-7-50	Copy of Central Office letter to Madras Branch.
M. 6(d)	:	:	16-10-50	Copy of Cannanore Branch Agent's letter to Central Office.
M. 7	:	:	13-7-51	Medical Certificate (Kasiviswanathan).
M. 8	:	:	25-4-52	Copy of Central Office letter to Tuticorin Branch.
M. 9	:	:	22-4-52	K. Kasiviswanathan's letter to the Bank.
M. 10	:	:	..	Copy of medical certificate.
M. 12	:	:	11-6-51	Telegram.
M. 13	:	:	19-6-51	Copy of Central Office letter to Singapore.
M. 14	:	:	7-9-51	T. Meenakshisundaram's letter.
M. 15	:	:	7-9-51	Medical Certificate.
M. 16	:	:	10-11-51	Copy of Madras Branch letter to Veeraswami.
M. 17	:	:	27-2-52	P. Veeraswami's letter to the Bank.
M. 18	:	:	29-6-49	Veeriah's letter to the Agent, Madras Branch.
M. 19	:	:	30-11-51	Meeriah's letter to the Bank.
M. 20	:	:	7-12-51	Copy of memo of service.
M. 21	:	:	..	Leave record of Veeraswami.
M. 22	:	:	..	Leave record of M. R. Meeriah.
M. 23	:	:	..	List of persons in Tirunelveli Junction Branch showing their absorption in service.
M. 24	:	:	...	List of persons in Purasawalkam Branch showing their absorption in service.
M. 25	:	:	...	List of persons in Vellore Branch showing their absorption in service.
M. 26	:	:	4-10-51	Letter from the Bank to Meenakshisundaram.

LIST OF WITNESSES EXAMINED

For the workers.—

'NIL'

For the Management—

M. W. 1	:	:	...	C. Krishna Menon.
M. W. 2	:	:	...	T. Kumariandy Pillai.

(S. NARASIMHULU),

Industrial Tribunal, Madras.

[No. LR-100(94).]

New Delhi, the 23rd January 1954

S.R.O. 364.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the matter of an application under section 33A of the said Act from Shri Krishnapada Sarkar and 81 other workmen of Angarpathera Colliery.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

APPLICATION NO 228 OF 1953

(arising out of Reference No. 6 of 1952)

In the matter of an application U/S 33A of Industrial Disputes Act 1947.

PRESENT:

Shri L. P. Dave, B.A. LL.B.—Chairman.

PARTIES:

Krishnapada Sarkar and 81 other workmen of Angarpathera Colliery of M/S. National Coal Co. Ltd., P.O. Katrasgarh, Dist. Manbhumi, Bihar.—Complainants.

Vs.

M/S. National Coal Co., Ltd., Angarpathera Colliery, P.O. Katrasgarh, District Manbhumi, Bihar.—Opposite party.

APPEARANCES:

Shri Kanti Mehta, General Secretary, Bihar Mazdoor Sangh,
Opposite Imperial Bank of India, Bhanbad,—For the Complainants.

Shri D. N. Srimani, Director, National Coal Co., Ltd., and Shri Biswa Ranjan Roy, Local Agent of the Company,—For the Opposite party.

AWARD.

This is a complaint under Section 33A of the Industrial Disputes Act.

2. This complaint is filed by 82 persons, alleging as under:—

They were workmen working in the Angarpathera Colliery belonging to the opposite party. Reference No. 6 of 1952 to which the complainants and the opposite party are also parties has been pending before this Tribunal since 5th May, 1952. In spite of this, the opposite party altered the conditions of service of the complainants without obtaining the permission of this Tribunal in writing as required by Section 33 of the Industrial Disputes Act. The majority of the workmen were not allowed to work on 13th June 1953, without any notice being given; all the workmen were refused work and wages without any notice from 15th June, 1953. One K. P. Sarkar, an attendance clerk, and one Badal Das, office peon, had not been paid their wages for the weeks ending 6th June 1952 and 13th June 1953, respectively; and one K. C. Ghosh, attendance clerk, had not been paid his wages since 1st May, 1953. The bonus of all the workmen had not been paid for the first quarter of 1953. The complainants therefore pray that they should be given full work in their original posts with continuity of service and also full wages from 13th June, 1953. They further pray that the arrears of wages of K. P. Sarkar, Badal Das and K. C. Ghosh, should be paid to them. Lastly it is prayed that bonus should also be paid to all workmen.

3. The opposite party filed its written statement denying the allegations contained in the complaint and further contended as under:—

It is not true that the majority of the workmen were not allowed to work on 13th June 1953, and/or that all workmen were refused work from 15th June, 1953. K. P. Sarkar was originally appointed to and was working in the Calcutta office of the opposite party and had been transferred as a relieving hand to the colliery in October. As there was no sufficient work at the colliery and as the Managing Agents wanted his services, he was transferred to Calcutta office by a letter, dated 1st June 1953, under the same conditions of service. He disobeyed the transfer order and flatly refused to join Calcutta office and thereupon the opposite party terminated his service from 6th June 1953, and offered him one week's pay in lieu of notice. He however accepted wages upto 6th June 1953 and refused to accept notice pay. From about the time of notice of transfer, the said K. P. Sarkar made alliance with other staff and in collusion with one another persuaded and even put pressure on other workmen to resort to a strike. With this object in view and with some ulterior motive, K. P. Sarkar along with other members of the staff began to make incorrect and inconsistent entries in the books and

registers. According to the premeditated plan, they attended their duties upto 16th June 1953, and stopped all work completely from 17th June 1953 and resorted to an illegal strike. All the staff and workmen had received payment of their wages upto week ending 13th June 1953 and have also been paid the bonus for the quarter 1953. The allegations in this respect must be rejected as they are not correct. The opposite party has not contravened the provisions of Section 33 of the Industrial Disputes Act. It is therefore urged that the complainants are not entitled to any of the reliefs asked for by them.

4. As I said above, the present complaint has been filed by 82 persons. It was filed on 30th July 1953 and the opposite party filed its written statement on 14th September 1953. It appears that after this, 73 of the complainants were given employment with effect from 1st October, 1953. Only 9 persons as mentioned in the statement Exhibit 17 are still out of employment. Thus the prayer for reinstatement would survive only in respect of these nine persons. Regarding the other 73 persons, the question that will have to be considered is whether they are entitled to any wages between 13th June 1953 to 30th September, 1953.

5. The complainants' case is that the opposite party did not allow a majority of the workmen to work on 13th June, 1953. It is further their case that all workmen were refused work from 15th June, 1953. On the other hand, the opposite party contends that on 13th June all the workmen excepting the miners attended their duties; that on 15th June the wagon loaders and the office staff and the guards and sweepers attended their work but the miners and the hazree labourers did not do so. It is said that the miners did not work on 13th and 15th, because they usually do not attend on Saturdays and Mondays. The management further state that on 16th June all the office staff and supervisory staff and the sweeper attended their work while no one else did so and that on and from 17th June 1953, no workman did any work. In other words, according to the workmen, it is a case of illegal lock-out on the part of the management; while the management's case is that it was a case of an illegal strike on the part of the workmen. Further, so far as the workmen are concerned, they allege that the illegal lock-out started on 13th June 1953 and was complete on 15th June 1953; while according to the management, the workmen stopped attending work from 15th and 16th and there was a complete strike from 17th.

6. Before proceeding to consider the contentions of the relative parties, I may mention a few facts. It appears that the management had not sufficient funds to work the colliery and the payment of wages was often in arrears. The workmen also felt that they had some other grievances against the management. In April 1953, the workers formed a union, as a branch of the Bihar Colliery Mazdoor Sangh. On 28th April 1953, they sent a letter of demands to the management. A copy of this letter has been produced as Appendix 'A' annexed to the complaint. A copy of this letter also appears to have been sent to the Conciliation Officer. On 2nd June 1953 the Union wrote a letter to the Conciliation Officer to intervene in the matter. On 12th June 1953, the Conciliation Officer wrote a letter to the management and also to the Union stating that he would hold conciliation office at 9 A.M. on 17th June 1953 and asked both parties to attend at the time. On that day, conciliation proceedings were held. The manager of the colliery and one Mr. Roy who is the Agent of the colliery attended the conciliation proceedings on behalf of the management. After some discussion, the Conciliation Officer proposed that the parties should settle the matter and agree to common terms. He prepared a draft of the proposed agreement and gave a copy of it to the Agent and the Manager, as they said that they had no authority to enter into or sign an agreement and they would have to consult the Managing Agents. The proceedings were adjourned to 24th June to find out whether the Managing Agents agreed to the terms and it was also decided that the Managing Agent should personally attend the conciliation proceedings on that date. It appears that he did not do so but wrote a letter to the Conciliation Officer.

7. In the meanwhile, the present trouble had started. As I said above, the union alleges that the management did not allow most of the workmen to work on 13th June 1953 and did not allow all workmen to work from 15th June 1953. The management admit that both on 13th June 1953 and 15th June 1953, the miners did not attend their work. They however allege that it is the usual practice for the miners to absent from work on Saturdays and Mondays and that is why the miners did not attend on 13th and 15th. On the other hand, the workmen urged that the miners were not allowed to work on these two days and that is why they did not do any work on these days. In my opinion, the allegation of the management cannot be accepted.

8. The miners are piece-rated workers and are paid according to the work done by them. It is therefore in their interest to attend work every day. They also get attendance bonus and free rice for every day they attend to the work. Thus they would not be interested in absenting themselves from work on any day. It also does not appear natural or probable that they should absent themselves from work on every Saturday and Monday (and also Sunday). That would mean that they work for only four days in a week. It is also unnatural that all (and not only some) of them should do this. One can understand that on the day following a pay day, some workmen may remain absent from work probably because they may have taken too much liquor after getting their pay and may not be in a fit condition to attend work on the day following. But it is not possible to believe that all miners should remain absent from work for three days every week.

9. Mr. Roy, the local Agent of the colliery, has stated that the miners do not attend work on Saturdays and Mondays in all small collieries including their own colliery. Not a single instance of any other colliery has been produced or proved before me to show that the miners did not attend work on Saturdays and Mondays. It may then be noted that even Mr. Roy admits that ever since the workmen started working again in the colliery from 1st October 1953, they are working on every Saturday and also on every Monday. This means that his previous allegation that the miners did not attend work on Saturdays and Mondays in this colliery and in all small collieries does not appear to be correct. I may further mention that I have gone through the attendance registers of this colliery prior to 13th June 1953 and I have found that the allegations that all the miners did not attend work on Saturdays and Mondays is not true. I have found that they have attended work almost on every Saturday and Monday. Thus the non-attendance of the miners from work on 13th June and 15th June does not appear to have been voluntary as alleged by the management.

10. On the other hand, it appears to be more probable that the management must have not allowed them to work on Saturday and Monday. As I said above, the management had not sufficient funds to run the colliery. The letter of the Agent written to the Conciliation Officer on 19th June 1953, mentions that the financial position of the company was not sound and that since 1951 it was going from bad to worse. It further mentions that the working of the colliery in 1952 showed a net loss of approximately Rs. 34,000, and that the manager had spent a total sum of Rs. 27,532 and odd for the first five months of 1953 whereas the colliery had raised only 2,573 tons of coal during that period and had despatched only 965 tons; the value of coal despatched during this period was about Rs. 10,852 out of which a substantial sum was still outstanding. The letter goes on to state that the management had brought these facts to the notice of the manager and had instructed him to work the colliery economically and make surplus reduction and restrict raisings for a limited period to enable the company to clear the stock and get sufficient funds. It further appears that the managing agents had asked the local agent and the manager that the weekly payments excepting the payments for wagon loading and transportation should not exceed Rs. 500. This appears from the manager's letter to the Managing Agent produced at Serial No. 9 with the list Exhibit 9, and also from the evidence of Mr. Roy, who has said that the Managing Agent had issued instructions to this effect in about March or April 1953. This would show that the management wanted to restrict their weekly expenses and also to restrict their weekly raisings. It must be with this aim in view that the manager and the local Agent must have refused work to the miners on 13th and 15th June; because by doing so, they would be able to reduce the expenses and also to restrict the output of coal. In my opinion, therefore, the miners were not voluntarily absent on 13th and 15th but were not allowed by the management to work on those days.

11. The workmen then allege that from 15th June, no one was allowed to work and in this connection, they also include the clerks as having not been allowed to work on 15th June. On the other hand, the management urge that on 15th June, not only the clerks but also the wagon loaders and supervisory and office staff, guards and sweeper attended to their work and further that on 16th June the office staff and supervisory staff and sweeper also did their work. The management urge that it was only from 17th that all workmen stopped work.

12. Now so far as the 15th is concerned, it was a Monday; and according to the management, they loaded a wagon on that day. They have produced wagon challans, dated 12th June 1953 and 14th June 1953 and D note book in support of this. It appears from these papers that a wagon was loaded at this colliery on 15th June, 1953. This would not necessarily mean that the loaders of this colliery did so. As admitted by Mr. Roy in his deposition, some miners of one

colliery go to work as wagon loaders in another colliery nearby. It is therefore quite possible that the above wagon may have been loaded at this colliery on 15th June 1953 by other persons, that is persons other than the wagon loaders of this colliery. The best evidence to prove that it was the wagon loaders of this very colliery who loaded the wagon on 15th would be the attendance register, which however shows no name of any worker as having attended work on 15th June 1953. It was said that the clerks had not noted the attendance of workmen who attended the work on that day with a view to creating evidence. This appears to be far-fetched. It cannot be believed that the workmen had entered into a conspiracy of going on strike from 17th and yet wanted to show that they had been illegally locked out from 13th or 15th. As I shall presently show, there is documentary evidence in the writing of some clerks showing that they attended their work on 15th. If the clerks had already conspired to create evidence that no one worked at the colliery on 15th, they would not have written these documents. I do not believe the allegation of the management that the clerks had deliberately not marked the presence of any wagon loader on 15th to create evidence; because on that day, they could not have any such idea. It is against the interest of the workmen not to have their presence marked on a day on which they attended the work and this also would go against the allegation that the presence of workmen was not marked on 15th though they attended work on that day. Further the management should have produced the receipts, which they must have taken from the wagon loaders for doing work on the 15th and when they have not done so, an adverse inference must be drawn against them for this, especially when the attendance registers show that the wagon loaders did not attend work on 15th. I believe the workmen's case that the wagon loaders were also not allowed to work on that day by the management.

13. So far as the clerical staff is concerned, the workmen allege that they were refused work from 15th; while the management alleges that they voluntarily absented themselves from 17th. Neither party appears to be speaking the whole truth. That some of the clerks did do some work at the colliery on 15th appears to be a fact. Firstly we have the daily report of raising of 14th June showing that no coal was raised on that day but that a wagon was loaded on 15th. This report is written by a clerk K. C. Majumdar. Then there are attendance sheets of 13th, 15th and 16th June. One sheet of 13th is written by one D. N. Bhattacharya and another sheet of the 13th and attendance sheet for the 14th is written by one Mr. K. C. Ghosh. One more sheet of that day is written by one Mr. S. K. Gupta. These sheets however have no importance; because there is no dispute about the clerks having attended office on 13th. We have however one hazree Sheet of 15th June 1953, which is written by clerk K. P. Sarkar. His explanation about it is that this sheet originally bore the date 5th January 1953, but that date has subsequently been changed to 15th June 1953. This explanation cannot be believed. One can easily change 5 to 15 by writing the figure "1" before it; but is not so easy to change "1" to "6". If such a change is made, the sheet would probably show that the original figure was 1 and was subsequently changed to 6. A glance at this sheet shows that the figure that was originally written was "6" and no change has been made therein. There is another circumstance showing that this sheet must be of 15th June 1953 and not of 5th January, 1953. It is that one B. K. Banerjee was working as an Assistant Store Keeper in the colliery in January and the bonus register and the ration issue register of the colliery show that he was present for all the days in the week ending 10th January 1953. In other words, he was present on 5th January, 1953. If the above hazree sheet was for that date, one would have expected the name of B. K. Banerjee to have been included in it. This shows that the above sheet is not of 5th January 1953 but it is really of 15th June, 1953. There is another circumstance which leads us to the same conclusion. The trammers' Khata has been written by this very clerk K. P. Sarkar. He has stated that the letters "P" and "A" shown in the book are for showing their presence and absence and are made by him on the basis of a written report made by the attendance clerk. He has further said that the reports are sent by the attendance clerk at the end of the first shift if they related to the first shift and on the next day if they related to the second or third shifts. Mr. Sarkar had marked the presence of the different workmen for 13th June 1953. Even if these people worked in the first shift, the attendance clerk would have sent his report after 2 P.M. on 13th June, 1953. According to the evidence of Mr. K. P. Sarkar, he attended office up to 10-30 or 11 A.M. on 13th June 1953 and did not attend office after this on that day nor did he attend office on the next day (i.e. 14th), which was a Sunday. He could not have got the report of the attendance clerk before he left duty on 13th. This would show that he must have made these entries on 15th, and his allegation that he was not allowed to work on that day does not appear to be correct.

14. The management have then produced some documents in the handwriting of one K. C. Majumdar (a clerk), showing that he must have worked at the office on 15th and 16th of June. It however appears that this clerk was either in the good books of the management; or for reasons best known to him, he was prepared to work for the management even though his colleagues were not allowed to work. The local Agent Mr. Roy has admitted that even during the period of the so called strike, they had got bonus sheets prepared by this K. C. Majumdar. Similarly it is quite possible that K. C. Majumdar may have been persuaded to write the above letters on the 16th, even though he may not have been allowed to work on that day or even though he may have been on strike. It may even be that whereas other clerks were not allowed to work, K. C. Majumdar may have been asked to work clandestinely. The mere fact that K. C. Majumdar wrote one or two letters on the 16th does not necessarily mean that all clerks did work on that day. There is no other document in the handwriting of any other clerk to show that any of them did any work on 16th. On the other hand, we have the admission of Mr. Roy that the presence of the office staff was marked every day on a hazree sheet, which was sent from day to day to their Head Office and that such a hazree sheet was sent to the Head Office on 16th June, but it did not show the presence of any clerk, but it showed the presence only of the sweeper and the mess kamin. If all the clerks were present on 16th as alleged, there is no reason why the hazree sheet of that day should not have shown any clerk having been present on that day. In this connection, it was said that hazree sheets were sent by the clerks directly to the Head Office without showing it to the manager or the local Agent and the clerks must have therefore not written the name of any clerk in the hazree sheet of 16th with a view to create evidence. As said above, this does not appear to be probable. If the clerks were really attending to their duty on 16th, their presence would certainly have been marked in the hazree sheet. It is too much to believe that the clerks had already entered into a conspiracy to create false evidence. If they had really attended the office and done some work on 16th, there would have been some other documents in their handwriting showing their presence on that day.

15. It is an admitted fact that the clerks have not been paid their wages for 15th and 16th June. Mr. Roy says that they offered wages for these days to the clerks, but they refused to accept them. This also does not appear to be natural or probable. There is nothing to substantiate the allegation of Mr. Roy that the clerks were offered wages for 15th and 16th June. This also shows that the clerks must not have worked on 15th and 16th.

16. We have then the fact that on 15th June 1953 the Union wrote a letter to the Regional Labour Commissioner stating *inter alia* that the management had suspended all work at the colliery without any notice and that they should be directed to resume work immediately. This letter is produced at appendix 'B' annexed to the complaint. Mr. Das Gupta, Office Secretary of the Bihar Colliery Mazdoor Sangh, who wrote this letter has stated that some workmen came to his office on 15th and told him this, and thereupon he wrote this letter. It appears that on that very day, the Conciliation Officer wrote a letter to the Manager of the colliery stating *inter alia* that it was reported to him by the Bihar Colliery Mazdoor Sangh that the management had locked out the mine without any notice. The local Agent Mr. Roy, who is the only witness examined on behalf of the management denied that the Conciliation Officer wrote any letter to them on 15th June 1953 informing them that the Union had complained to him that they had locked out their mine. He also stated that no such letter was ever received by him or by the manager. On this, the file of the Conciliation Officer was called for and it contained a receipt signed by the manager acknowledging the receipt of the above letter. It also bore the seal of the colliery. It would thus be clear that on 15th June 1953 itself, the management were informed that the union had made a complaint that the management had locked out the mine without any notice. No reply was given to this letter nor was the above allegation denied by the management before the Conciliation Officer at the conciliation proceedings on the 17th.

17. On the whole, I am satisfied that the management refused work to all workmen from the 13th, though it appears that one or two clerks may have been allowed to do some work on 13th but on and from 16th, no clerk was allowed to work. The manual workers were not allowed to work on and from 13th. In my opinion, it was a case of lock out from 13th, 15th and 16th respectively in the case of different workers and it was not a case of strike from 17th.

18. I am constrained to observe that the management in the present case have shown callous disregard for the workmen and also have shown scant respect for

law. They never paid the wages regularly to the workmen nor did they make statutory payments of bonus in time and it was only when pressure was brought on them by the authorities that they did so. Even in doing so, they tried to mislead authorities. For instance, the bonus book shows that no payment for the last quarter of 1952 was made in time. The Labour Inspector passed an order on 3rd April to make the payments immediately and thereupon the management wrote the names of only 14 persons in the bonus register and made payments to them, though really 31 persons were entitled to these payments. It was only after the Inspector made an endorsement again on 13th May 1953 that they entered other names in the books. We then find that in the register of wages, the payments said to have been made to the workmen were shown as more than what the workmen were actually paid. Again it was at the instance of the Senior Labour Inspector that these entries were corrected and amounts actually paid were shown in these registers. These discrepancies were not for only one week but for all the weeks of March. Then we find that when the present complaint was filed and it was alleged by the workmen in the complaint that K. P. Sarkar, Badal Das and K. C. Ghosh had not been paid their wages for certain periods, the management in their reply stated that they had made these payments to these people. It turns out however that these payments were made only on 14th August 1953, that is, after the present complaint was filed. It is true that the payments were made before the written statement was filed by the management; the management should therefore have stated in the written statement that they had made the payments after the complaint was filed. On the contrary, they stated not only that the workmen had already been paid but that the allegations made in the complaint regarding non-payment of wages and bonus were false and unfounded. An impression was thus sought to be created as if the payments had been made before the complaint was filed.

19. I may now refer to the case of K. P. Sarkar. It was alleged by the management in the written statement that this clerk was originally appointed and was working in Calcutta office of the Managing Agent and was transferred as a relieving hand at the colliery in October 1952. It was further alleged that there was not sufficient work at the colliery and so he was transferred to the Calcutta office but he refused to go to Calcutta and disobeyed the order of transfer and thereupon his services were dispensed with from 6th June 1953. K. P. Sarkar denies that he was transferred or that he was dismissed. In his evidence, the local Agent, Mr. Roy had to admit that Mr. Sarkar was appointed at the Calcutta office on trial to see whether his work was satisfactory and that he worked there only for 15 days in July 1952. He was appointed to the colliery in September or October 1952, as a vacancy had occurred in the colliery. Thus the allegation in the written statement that Mr. Sarkar was appointed to the Calcutta office and was transferred to the colliery office is not true. Mr. Sarkar worked in the Calcutta office on trial to see if his work was satisfactory. After working for 15 days, he had to wait for a month or two till a vacancy occurred at the colliery and then he was appointed at the colliery. Thus the allegations in this respect made in the written statement are not true.

20. It has then been said that Mr. Sarkar was transferred to the Calcutta Office and he refused to carry out the orders of transfer. It has been said that the Managing Agent wrote a letter to the manager about the transfer and the manager personally called Mr. Sarkar and told him about the order and Mr. Sarkar refused to go to Calcutta. The manager has not been examined. There is no written order passed by the manager about the alleged transfer. About the alleged dismissal also there is no order of dismissal. It is said that the manager wrote to the Head Office and the Head Office replied that Mr. Sarkar should be dismissed and the manager orally communicated that order to Mr. Sarkar. No charge-sheet was served on him nor was his explanation asked for nor was, as I said above, any written order passed about the alleged dismissal. The manager who is said to have communicated the order has not been examined. The local Agent Mr. Roy says that the manager communicated the orders to Mr. Sarkar in his presence but I do not believe him. The most curious part of the whole affair is that though Mr. Sarkar is said to have been dismissed with effect from 6th June 1953, he was actually allowed to work thereafter and it is not in dispute that he did work at least up to 13th June 1953. As I held above, he has also probably worked on the 15th and still we are asked to believe that he had been dismissed from 6th June 1953.

21. The other curious fact is that Mr. Sarkar has been paid his wages up to 6th June 1953. As I said above, Mr. Sarkar was admittedly allowed to work at

least upto 13th; his presence was also marked in the registers of the company. According to the management, he had worked upto and inclusive of 16th and still he has not been paid beyond 6th. When the local Agent Mr. Roy was questioned about it, he said that the management were ready and willing to pay his wages upto 16th; but for reasons best known to him, he did not accept the wages beyond 6th June 1953. Mr. Roy also said that it was not correct to say that when Mr. Sarkar demanded the wages for the week ending 13th June 1953, the management said that they were not willing to pay, as he had refused to carry out the orders of transfer. On a letter of the Regional Labour Commissioner of 1st December 1953 being shown to him, he admitted that their manager must have told the Labour Inspector that Mr. Sarkar was not paid his wages for week ending 13th June 1953 as he had not carried out the orders of transfer to Calcutta.

22. I do not believe that Mr. Sarkar was transferred to the Calcutta office nor do I believe that he refused to carry out the said order. I also do not believe that he was dismissed from 6th June 1953. I am of opinion that he was in service all along and worked at the colliery upto 15th June 1953, and is entitled to his wages as such.

23. As I held above, he and other clerks were not allowed to work by the management from 16th. The manual labourers had not been allowed to work from 13th and some from the 15th. The workmen were not allowed to work probably because stocks had accumulated at the colliery. The management instead of having recourse to legitimate means took law into their own hands and did not allow workmen to do any work. The workmen, who had not been receiving their wages and bonus etc. in time, had already formed a union, and at a meeting held on 14th, they elected Mr. Sarkar as their President. A copy of this letter was sent to the management by the Union on 15th of June and must have reached the management on 16th. It appears that on receipt of this, the management thought it fit to stop the clerks also from working at the colliery. It was a clear case of victimisation.

24. The management have then produced two applications said to have been given by different workmen on 30th August 1953 and 1st October 1953 respectively. The first of them bears thumb marks of three persons, who stated that they assured the management that they would never resort to a strike in the colliery and promised to join their duties from the next day. It is further stated that they had no claim against the company. The second letter purports to be passed by 46 persons who stated that they had stopped work from the 17th June, as they were misled by other people, and that they had now realised their mistake and were sorry and informed the management that they would join their duties from the next day. They further assured the management that they would never do so in future and hoped to be excused for the folly. It may be noted at the outset that both these letters are written by the local Agent Mr. Roy and not by any independent person. The first bears the thumb marks of three persons and the second bears thumb marks of 46 persons and signature of one person. In other words, almost everyone who passed these two documents was illiterate. The persons who has signed the second letter, does not know Bengali, though the letter that was signed by him was written in Bengali. Mr. Roy is evidently an interested person. The workmen were out of employment for a long time. In the circumstances, if a writing was written by the Agent of the management, and illiterate workmen were made to put their thumb marks thereon before they were allowed to resume duties, such a writing would have no value. It cannot be taken to be a document passed of their own free will by the workmen after understanding the nature of the document. I do not attach any importance to these letters.

25. The result is that the complaint must be granted. As I said above, the complaint has been made by 82 workmen; but out of these people, the management have already allowed 73 workmen to join their duties from 1st October 1953, while nine persons mentioned in Exhibit 17 have not been allowed to join duties. These nine persons must be reinstated to their original posts, provided they offer themselves for the same within one month of the award becoming enforceable. These persons should be paid their back wages and given all the benefits of Dearness allowance, cash concessions, free rice, bonus etc. as if they have been in service all along. The arrears must be paid to them within one month of the award becoming enforceable. The other 73 complainants must be paid their wages and other benefits from the date they were not allowed to work till the date of their reinstatement, as if they were on duty during that period also.

These amounts must be paid to them within one month from the date of the award becoming enforceable. I pass my award accordingly.

Dated 12th January, 1954.

(Sd.) L. P. DAVE, Chairman.

Central Govt's., Industrial Tribunal Dhanbad.

[No. LR.2(365).]

S.R.O. 365.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the matter of an application under section 33A of the said Act from Shri Darbari Mian, a workman of Digwadih Colliery.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

APPLICATION No. 341 OF 1953.

(arising out of Reference No. 6 of 1952)

In the matter of application U/S 33A of Industrial Disputes Act 1947.

PRESENT

Shri L. P. Dave, B.A.L.L.B.—Chairman.

PARTIES

Shri Darbari Mian, Pump Khalasi, Digwadih Colliery, M/S Tata Iron & Steel Co. Ltd., P.O. Jealgora, Distt. Manbhum, Bihar.—Complainant.

Vs.

M/S Tata Iron & Steel Co. Ltd., Jamadoba, P.O. Jealgora, Distt. Manbhum, Bihar,—Opposite party

APPEARANCES

Shri B. N. Sharma, General Secretary, Tata's Collieries Labour Association, P.O. Jealgora, Distt. Manbhum, Bihar.—For the Complainant.

Shri D. Narsingh, Chief Personnel Officer, M/S Tata Iron & Steel Co. Ltd., P.O. Jealgora, Distt. Manbhum, Bihar.—For the Opposite party.

AWARD

This is a complaint under Section 33A of the Industrial Disputes Act.

2. The complainant alleges that he has been discharged from service by the manager of the Digwadih colliery belonging to the opposite party with effect from 31st August 1953 on the alleged ground that he has completed sixty years of age. This was done during the pendency of conciliation proceedings and during the pendency of Reference No. 6 of 1952 to which the opposite party and their workmen were parties. The opposite party thereby committed a breach of section 33 of the Industrial Disputes Act. The Conciliation Officer who was moved in the matter examined the question in detail and suggested to the Superintendent of Collieries not to terminate the complainant's service; but still, an order of dismissal was passed. The complainant further alleges that the standing orders do not contain any provision for superannuation and also that the complainant was not sixty years of age but only 44 years of age and hence the order of his discharge was not proper. He has also contended that the alleged rule about superannuation was never enforced before 1953 and that he was never examined even by the company's medical officer for ascertaining his age. He therefore prayed that he should be reinstated from 30th August 1953 with back wages.

3. The opposite party by its written statement Exhibit 6 contends that it had not violated the provisions of Section 33 of the Industrial Disputes Act. It further contends that according to the provisions of its Retiring Gratuity Rules, every permanent un-covenanted employee must retire from service on attaining the age of sixty years. The applicant cannot make a grievance that this rule was not enforced for some time. On 30th July 1952 his attention was drawn to his age as mentioned in his service card and he was advised medical examination if he desired an extension of service after completion of 60 years. He neither challenged the age as mentioned in the letter nor got himself medically examined. On 14th February 1953, he was again informed about his age mentioned in the service card and was offered three months' time to produce evidence or undergo medical examination to disprove the age mentioned in service card. He

did not challenge the age nor took any steps to disprove the age recorded in service card, according to which he completed 60 years of age on 1st January 1953. Still the opposite party waited till 20th July 1953, when he was informed that he would be superannuated from 26th July 1953. At the instance of the Conciliation Officer, he was allowed to continue his duties; and after careful consideration, the opposite party informed him on 21st August 1953 that his service would terminate from 31st August 1953. According to the conditions of service applicable to the complainant, he had retired automatically on his attaining the age of 60 years. The opposite party therefore did not commit a breach of Section 33 of the Industrial Disputes Act. It therefore urges that the complaint should be dismissed.

4. It is an admitted fact that the complainant was working as a Pump Khalasi in one of the collieries belonging to the opposite party and that his services were terminated with effect from 31st August 1953. At that time Reference No. 6 of 1952 was pending before this Tribunal. The opposite party and their workmen were parties to this reference. The complainant alleges that by terminating his services, the opposite party had committed a breach of Section 33 of the Industrial Disputes Act, as they had not obtained the specific permission in writing of this Tribunal.

5. It has been held in the case of Joseph Alva and General Motors India Limited reported at 1953, Vol. II, L.L.J. page 841, that termination of service of an employee even on the ground of superannuation would require the specific permission of the Tribunal under Section 33 of the Industrial Disputes Act, if the termination is to be effected during the pendency of a dispute before a Tribunal. Hence in the present case, the opposite party committed a breach of Section 33 by terminating the services of the complainant with effect from 30th August 1953, during the pendency of Reference No. 6 of 1952 without obtaining the permission of this Tribunal.

6. The opposite party's case is that they have not in any way altered the conditions of service applicable to the complainant because under the terms of service an employee on attaining the age of 60 years would be superannuated and must retire. In this connection, the opposite party relied on the Retiring Gratuity Rules of the company. These rules have not been produced in the present case; but a copy thereof has been produced before this Tribunal at Exhibit 60 in miscellaneous application No. 123 of 1953, which was also a case of termination of services on the ground of superannuation. These rules were framed in 1937. It however appears that they were made in the first instance for the main factory of the opposite party at Jamshedpur. The Deputy Superintendent of Collieries of the opposite party Mr. Engineer was examined as a witness at Exhibit 21 in the above proceedings. The parties in the present case have stated that the deposition of Mr. Engineer recorded in the above case (namely in Application No. 123 of 1953) should be read as evidence in the present case. In that deposition, Mr. Engineer has stated that the scheme of Retiring Gratuity Rules was introduced in the collieries about 10 years ago. He could not remember the exact year, but it was certainly after 1937. He gave his above deposition on 22nd September 1953 and this would mean that the Rules of Gratuity were made applicable to the employees employed in the collieries in about 1943.

7. So far as the present complainant is concerned, there is nothing on record to show as to when the present complainant joined service. It however appears that originally he started service under a contractor of the opposite party and was later taken up as a direct employee of the opposite party. Mr. Narsingh on behalf of the management told me that he (complainant) had joined service on 28th January 1938. Mr. Sharma on behalf of the complainant urged that this was the date on which the complainant was taken up under the direct employment of the management but that he was already under the employment of a contractor of the opposite party and the date of his joining service should be taken to start from the date he joined the contractor's service. I do not agree with this contention. As long as the complainant was working under the contractor, he was the contractor's employee and it would be only when he became the direct employee of the opposite party that the conditions of service of employees of the opposite party would become applicable to him. I would therefore hold that the complainant would be governed by the conditions of service which were in vogue in 1938.

8. As I said above, the evidence of Mr. Engineer shows that the retiring gratuity rules of the company were applied to the collieries in about 1943. The complainant had already joined the opposite party's service prior to that. In other words, when he joined service, the Gratuity Rules were not in force. In

his evidence, Mr. Engineer has admitted that excepting for the rule contained in the gratuity rules, there was or is no rule that a workman must retire on attaining the age of 60 years. He also admitted that there was no rule or agreement before this about a workman retiring at a particular age and the practice was that the persons continued to work till they were found physically unfit. In other words, when the complainant joined service in 1938, there was no condition of service that he would have to retire when he completed the age of 60 years. On the contrary, the practice was that he would be continued in service as long as he was physically fit to work.

9. It is true that retiring gratuity rules contain a rule (Rule 5) which lays down that every un-covenanted employee of the company must retire from service on attaining the age of sixty years (unless his service is extended as mentioned therein). In my opinion, this rule cannot affect a person who had already joined the service of the company before the rules were framed or introduced. By framing a set of rules, an employer could not change or prejudice the terms of service of an employee, who was already in service before that date. The employee in service should ordinarily be given the option to elect whether he should accept the new rules or not. There is nothing on record to show that when the gratuity scheme was introduced, the workmen were even informed about it, much less given an option to elect the rules or not. Mr. Engineer stated that he was not sure whether a notice was put up on the notice board about the introduction of the gratuity scheme. It may also be noted that though the rules were framed in 1937 and were applied to the collieries in about 1943 or thereabouts, the rule about the superannuation was not enforced till 1952. In that year, the management started issuing notices to the employees asking them whether they accepted the ages mentioned in their service card as correct. This would also show that till 1952 the old workmen may not be aware of the company having framed a rule that all the employees must retire on attaining the age of 60 years. It may lastly be noted that even under the above Rules, no employee was or is entitled as of a right to any payment of gratuity. In other words, though the company had framed rules for gratuity, the rules are such as could not be enforced by an employee so as to claim gratuity on retirement.

10. In the present case, the complainant was sent a letter on 30th July 1952 that according to his service card, he had completed 59 years of age on 1st January 1952 and that under the Gratuity Rules, employees who completed 60 years of age were liable to be superannuated. He was further informed that in special cases, extension could be given by the company till the employee completed the age of 61 years, provided he was declared physically fit by the Colliery Medical Officer. The complainant was therefore advised to get himself medically examined by the Colliery Medical Officer, if he desired an extension of service after he completed 60 years of age. It further appears that he was given a notice on 14th February 1953 that according to his service card his age on 1st January 1952 was 59 years and as under the Gratuity Rules the employee who completed 60 years of age were liable to be superannuated, he was given an opportunity in case he did not accept his above mentioned age, to submit within three months from the receipt of the notice documentary evidence in support of his contention. It appears that the complainant did not take any action as required by this letter/or this notice. It was argued from this that he must be deemed to have accepted his age as correct. The complainant is an illiterate workman and merely because he did not protest against this letter or notice, it could not be said that he had accepted the terms thereof. There cannot be an estoppel, firstly because his silence was due to ignorance and illiteracy, and secondly because he has not led the management to believe a particular thing. Further even if the complainant had already attained the age of 60 years, his service could not be terminated so long as he was physically fit. It is not the case of the opposite party that the complainant is physically unfit. In any case, therefore, they were not justified in terminating his services.

11. In the result, the order of termination of the complainant's services from 31st August 1953 is not proper, and is set aside; it is directed that he should be reinstated in service with effect from 31st August 1953. He is also entitled to wages, bonus, and other advantages which he would have got if he had continued in service. The arrears should be paid to him within one month from the date of the award becoming enforceable.

The 13th January, 1954.

(Sd.) L. P. DAVE, Chairman.
Central Government's Industrial Tribunal,
Dhanbad.

[No. LR. 2 (365) /I.]

S.R.O. 366.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the matter of an application under section 33A of the said Act from Shri Biyas, a workman of 6 and 7 Pits Colliery, Jamadoba.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

APPLICATION NO. 400 OF 1953

(arising out of Reference No. 6 of 1952)

In the matter of application U/S 33A of Industrial Disputes Act 1947.

PRESENT:

Shri L. P. Dave, B.A., LL.B.—*Chairman.*

PARTIES:

Sri Biyas, Recruiting Chaprasi, 6 and 7 Pits Colliery, Jamadoba, Bhaga P.O. Manbhumi District, Bihar.—*Complainant.*

Vs.

The Tata Iron and Steel Co. Ltd., Jamadoba, Jealgora P.O. Manbhumi, Bihar.—*Opposite Party.*

APPEARANCES:

Shri B. N. Sharma, General Secretary, The Tata's Collieries Labour Association, P.O. Jealgora, District Manbhumi, Bihar.—*For the Complainant.*

Shri D. Narsingh, Chief Personnel Officer, The Tata Iron and Steel Co. Ltd., Jamadoba, P.O. Jealgora, District Manbhumi, Bihar.—*For the Opposite party.*

AWARD

This is a complaint under Section 33A of the Industrial Disputes Act.

2. The complainant alleges that he has been discharged from service by the manager of Pits 6 and 7 belonging to the opposite party with effect from 30th August 1953 on the alleged ground that he had completed sixty years of age. This was done during the pendency of conciliation proceedings and during the pendency of Reference No. 6 of 1952 to which the opposite party and their workmen were parties. The opposite party thereby committed a breach of Section 33 of the Industrial Disputes Act. The Conciliation Officer who was moved in the matter examined the question in detail and suggested to the Superintendent of Collieries not to terminate the complainant's service; but still, an order of dismissal was passed. The complainant further alleges that the standing orders do not contain any provision for superannuation and also that the complainant was not sixty years of age but only 50 years of age and hence the order of his discharge was not proper. He therefore prayed that he should be reinstated from 30th August 1953 with back wages.

3. The opposite party by its written statement Exhibit 6 contends that it had not violated the provisions of Section 33 of the Industrial Disputes Act. It further contends that according to the provisions of the Retiring Gratuity Rules of the opposite party, every permanent un-covenanted employee must retire from service on attaining the age of sixty years. As according to the service card of the complainant, his age was over 60 years of age on 1st May 1953, he was given an opportunity to produce evidence about his age or to submit himself for medical examination by the colliery medical officer. The complainant could not produce any documentary evidence about his age and on examination by the medical officer on 18th April 1953, he was found to be of over 60 years of age. The complainant was informed accordingly that he would be superannuated from 17th May 1953. He made representations and thereupon he was re-examined by the medical officer on 12th May 1953 who confirmed his previous opinion. The opposite party considered the representations made by the complainant and the opinion of the medical officer and informed him that he would be superannuated from 31st May 1953. In the meantime, conciliation proceedings were taken up by the Conciliation Officer and hence the order of superannuation of the complainant from 31st May 1953 was cancelled. According to the conditions of service applicable to the complainant, he had retired automatically on his attaining the age of 60 years. He was therefore informed that his service would terminate from 30th August 1953. The complainant never complained that the Gratuity Rules meant a change of conditions of his service. The opposite party therefore urges that the complaint should be dismissed.

4. It is an admitted fact that the complainant was working as a recruiting chaprasi in one of the collieries belonging to the opposite party and that his services were terminated with effect from 30th August 1953. At that time, Reference No. 6 of 1952 was pending before this Tribunal. The opposite party and their workmen were parties to this reference. The complainant alleges that by terminating his services, the opposite party has committed a breach of Section 33 of the Industrial Disputes Act, as they had not obtained the specific permission in writing of this Tribunal.

5. It has been held in the case of Joseph Alva and General Motors India Limited reported at 1953, Vol. II, L.L.J. p. 841 that termination of service of an employee even on the ground of superannuation would require the specific permission of the Tribunal under Section 33 of the Industrial Disputes Act, if the termination is to be effected during the pendency of a dispute before a Tribunal. Hence in the present case, the opposite party committed a breach of Section 33 by terminating the services of the complainant with effect from 30th August 1953 during the pendency of Reference No. 6 of 1952 without obtaining the permission of this Tribunal.

6. The opposite party's case is that they have not in any way altered the conditions of service applicable to the complainant because under the terms of service an employee on attaining the age of 60 years would be superannuated and must retire. In this connection, the opposite party relied on the Retiring Gratuity Rules of the company. These rules have not been produced in the present case, but a copy thereof has been produced before this Tribunal at Exhibit 60 in miscellaneous application No. 123 of 1953, which was also a case of termination of services on the ground of superannuation. These Rules were framed in 1937. It however appears that they were made in the first instance for the main factory of the opposite party at Jamshedpur. The Deputy Superintendent of Collieries of the opposite party Mr. Engineer was examined as a witness at Exhibit 21 in the above proceedings. The parties in the present case have stated that the deposition of Mr. Engineer recorded in the above case (namely in Application No. 123 of 1953) should be read as evidence in the present case. In that deposition Mr. Engineer has stated that the scheme of Retiring Gratuity Rules was introduced in the collieries about 10 years ago. He could not remember the exact year, but it was certainly after 1937. He gave his above deposition on 22nd September 1953 and this would mean that the Rules of Gratuity were made applicable to the employees employed in the collieries in about 1943.

7. So far as the present complainant is concerned, there is nothing on record to show as to when the present complainant joined service. It however appears that originally he started service under a contractor of the opposite party and was later taken up as a direct employee of the opposite party. Mr. Narsingh on behalf of the management told me that he (complainant) joined service on 28th March 1945. Mr. Sharma on behalf of the complainant urges that this was the date on which the complainant was taken up under the direct employment of the management but that he was already under the employment of a contractor of the opposite party and the date of his joining service should be taken to start from the date he joined the contractor's service. I do not agree with this contention. As long as the complainant was working under the contractor, he was the contractor's employee and it would be only when he became the direct employee of the opposite party that the conditions of service of employees of the opposite party would become applicable to him. I would therefore hold that the complainant would be governed by the conditions of service which were in vogue in 1945.

8. As I said above, the Retiring Gratuity Rules of the opposite party were introduced in the collieries in about 1943. Rule 5 of these rules lays down that every uncovenanted employee of the company must retire from service on attaining the age of 60 years. Mr. Engineer has admitted in his evidence that this rule was never applied to any one till 1952. Hence merely because at the time when the complainant joined service, the Retiring Gratuity Rules were in force, it could not be said that the complainant knew that the rules provided for his compulsory retirement on his attaining the age of 60 years.

9. It was in 1952 that the opposite party began to issue notices to the employees asking them whether they accepted the ages mentioned in their service cards as correct. A similar notice was issued to the present complainant on 2nd January 1953. A copy thereof has been produced as Annexure 'A' to the written statement.

It mentions that the complainant's age according to his service card was 58 years 9 months on 1st January 1952 and that as under the Gratuity Rules, employees who completed 60 years of age were liable to be superannuated, he was given an opportunity, in case he did not accept his above mentioned age, to submit documentary evidence in support of his contention. This would go to show that the complainant must not have been aware about the rule about the superannuation and that is why he was given the above notice. In my opinion, the complainant was therefore not bound by the above rule, contained in the Retiring Gratuity Rules. No such rule has been incorporated in the standing orders of the company, which govern the conditions of service of the employees. The complainant is an illiterate person. It was for the opposite party to have established that the complainant joined service with the full knowledge that he would have to retire on attaining the age of 60 years and also with the full knowledge about the procedure for proving his age.

10. It appears that as soon as the company gave the above notice to the complainant, he disputed the correctness of his age. It appears that he was sent to the medical officer of the opposite party who gave an opinion that the complainant was over 60 years of age. The complainant challenged this opinion. He also pointed out that he had already been examined by the colliery doctor in 1949 when he was made a member of the Provident Fund and at that time he had stated his age and that it would show that he was fifty two years of age in 1953. A copy of this letter (dated 12th May 1953) has been produced by the opposite party as Annexure D1 to the written statement. It appears that on this he was again examined by the medical officer who gave a certificate on that very day that the complainant was over 60 years of age. In my opinion, this procedure was not proper. The medical officer had already given a certificate on 18th April 1953 that the complainant was over 60 years of age and human nature being what it is, it was not likely that even if he had made a mistake he would admit it. The management ought to have sent the complainant to another medical officer and not to the same medical officer. They should also have referred to the report of the medical officer who is alleged to have examined the complainant in 1949 (at the time of his becoming a member of the Provident Fund) and sent that certificate also to the medical officer when sending the complainant for re-examination. It appears that the complainant was examined by the Civil Surgeon, Civil Hospital, Dhanbad, on 29th May 1953 who gave a certificate that he appeared to be 50 years old.

11. It is true that ordinarily the Tribunal would not interfere in the decision of the management when they had evidence before them to show that the age of a person was 60 years, unless it was shown that their action was not bona fide. It is also true that when there was a conflict of medical opinion, it was for the management to decide which evidence they should accept and if they accepted the evidence of their own medical officer, it could not be said that their action was improper. But in the present case, the management did not adopt a proper procedure. They sent the complainant for re-examination to the very same medical officer, who had already examined him; whereas they should really have sent him to another medical officer. As I pointed out above, the report of the medical officer, who is said to have examined the complainant in 1949, should also have been brought to the medical officer's notice along with other relevant facts, namely, the entry made in the service card as also the entry made in his application for Provident Fund. As proper procedure was not adopted, it is doubtful whether the decision of the management that the complainant had already attained the age of 60 years can or should be accepted. I need not however give a definite decision on this point; because, in my opinion, the complainant could not be made to retire only on the ground that he had attained the age of 60 years.

12. As admitted by Mr. Engineer, the practice before the introduction of the above rule was that the persons continued to work till they were found physically unfit. The complainant has been found to be physically fit according to the certificate of the Assistant Surgeon, Civil Hospital, Dhanbad. The medical officer of the opposite party has not stated that the complainant was physically not fit nor is it the opposite party's case that the complainant is physically not fit.

13. In the result, the order of termination of the complainant's service from 30th August 1953 is not proper and is set aside; it is directed that he should be reinstated in service with effect from 30th August 1953. He is also entitled to wages, bonus, and other advantages which he would have got if he had continued

in service. The arrears should be paid to him within one month from the date of the award becoming enforceable.

Dated 13th January, 1954.

(Sd.) L. P. DAVE, Chairman,
Central Government's Industrial Tribunal,
Dhanbad.

[No. LR.2(365)/II.]

S.R.O. 367.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Bombay, in the dispute between the Bank of Jaipur Ltd., Ahmedabad, and its workmen.

BEFORE MR. S. H. NAIK, INDUSTRIAL TRIBUNAL, BOMBAY.

Reference (IT-CG) No. 1 of 1953

ADJUDICATION

BETWEEN

The Bank of Jaipur Limited, Ahmedabad

AND

Its Employees.

In the matter of an industrial dispute re: notice pay, leave pay, provident fund and compensation.

APPEARANCES:

Mr. A. R. Savoor, Ag. Manager, Bombay branch for the Bank.

Mr. R. M. Shukla with Mr. C. D. Rawal for the employees.

AWARD

This is a reference made by the Central Government under section 10(1) (c) of the Industrial Disputes Act, 1947. The dispute relates to four demands made by the ex-employees of one of the branches of the Bank of Jaipur at Ahmedabad which have been referred to in the Schedule annexed to the order of reference.

2. The facts leading to the dispute are briefly these. The Bank of Jaipur had two branches at Ahmedabad, one known as the Maskati Market branch (or the Ahmedabad branch) and the other as Relief Road branch. The Bank proposed to close down both the branches as deposits at these branches were very poor and there was no prospects of attracting more deposits in spite of strenuous efforts put in by the Bank in that direction. The expenses at these branches were out of proportion to their earning capacity. The Bank therefore served a notice on each of the employees of the Ahmedabad branch on the 26th March 1951, stating that it would close down that branch on the expiry of two months from the date of notice (Ex. U-1). On 26th May 1951 the Bank served a second notice on the employees concerned stating that their services would come to an end on the expiry of one month from the date of notice (Ex. U-2) and paid them in advance the wages for that period. Before the expiry of this notice the Bank discharged the employees on the 9th June 1951. They have therefore raised the present dispute.

3. Mr. Savoor raised an initial objection to the appearance of Mr. Shukla on behalf of the employees concerned in this case on the ground that the latter is a lawyer. Mr. Shukla stated in reply that although he has passed his LL.B., examination he has been working only as a trade unionist and he has neither obtained a sanad to practise nor practised in any law court as an advocate. These facts are not denied on behalf of the Bank. I do not think therefore that there can be any legal objection to the appearance of Mr. Shukla for the employees concerned.

4. The employees have made four demands on the Company. I shall now deal with these demands in their serial order.

Demand No. 1.—“Payment for the period of notice of termination of service.”

5. Ahmedabad Banks Employees Union which represents the employees concerned in this dispute has put in a statement of claim in which it states that while throwing out of employment the eight senior employees of the Ahmedabad

branch the Bank retained men who were junior to them in service and has thereby caused injustice to the workmen who have raised the present dispute.

6. The award of the All India Industrial Tribunal (Bank Disputes)—hereinafter called the Sen Award—was in force when the Bank served its first notice of termination of service on its employees on the 26th March, 1951. It is in accordance with paragraph 322(7) of that award that the Bank gave two months' notice to the employees concerned. That notice expired on the 26th May 1951. But instead of discharging the employees concerned on that day, the Bank continued them in service and gave them a fresh notice of one month on the said day. The second notice expired on the 26th June 1951 but before the expiry of that notice the Bank dispensed with the services of the employees on the 9th June 1951. As the Bank continued in its service the employees of the Ahmedabad branch after the 26th May 1951, it must be deemed that it waived the notice issued on the 26th March 1951. Otherwise, it should have discharged all those employees on the 26th May 1951. It therefore became necessary for the Bank to serve a fresh notice on the 26th May 1951 and the Bank did serve such a notice. As the Sen Award had been set aside by the Supreme Court on the 9th April 1951 it was not incumbent upon the Bank to give two months' notice of termination of service as required by the said award. The Company could rely on its own rules and regulations. It was urged by Mr. Savoor that the Bank issued the notice, dated the 26th May 1951 in accordance with its rules and regulations, a copy of which is produced in these proceedings (Ex. C-2). Even while following its own rules the Bank made a mistake. Rule 23 read with Rule 22 requires the Bank to give a calendar month's notice to its employees "getting Rs. 100 and over" and two calendar months' notice to those "getting Rs. 101—250". The statement produced by the Bank itself shows that out of the 8 employees concerned in this reference 4 were getting more than Rs. 100 per month and the remaining were getting less than Rs. 100. The Bank should have therefore given one calendar month's notice ending on the 30th June 1951 to those getting less than Rs. 100 per month and two calendar months' notice ending on the 31st July 1951 to those getting Rs. 101—250 per month. The Bank paid wages upto 26th June 1951 to the 8 employees. I therefore direct the Bank to pay wages (including allowances) for four days to those who were getting Rs. 100 or less per month and wages (including allowances) for one month and four days to those getting Rs. 101—250, in the month of May 1951.

Demand No. 2.—"Payment for the period of accumulated leave."

7. The Union states that, as the Bank is granting leave having regard to exigencies of work, the employees did not always get leave when they needed it. The rules of the Bank provide for privilege leave being granted which could be accumulated upto the limit laid down therein. The rules also provide for the grant of sick leave and casual leave. The Union prays that, as the services of the employees of the Ahmedabad branch were terminated for no fault of theirs, full wages for the period of accumulated leave should be ordered to be paid to them.

8. The Bank's reply to the demand is that as the Sen Award was not in force at the time of the closure its own leave rules applied to the employees and, according to its leave rule No. 9, accumulated leave, if any, lapses on notice of termination of service given to or by an employee and no salary or allowance is payable for any leave unavailled of. According to the Bank therefore whatever accumulated leave stood to the credit of each of the retrenched employees lapsed on the termination of his service.

9. It is true that the Sen Award was not in operation at the time of the retrenchment in question and therefore the employees concerned were governed by the Bank's own leave rules. But the Bank is a "commercial establishment" within the meaning of the definition given in section 2(4) of the Bombay Shops and Establishments Act, 1948 and therefore under the provisions of section 35 read with those of section 36 the retrenched employees would be entitled to wages for the leave at the rate given in section 36 of the said Act. These statutory provisions override the provisions of the Bank's own leave rules.

10. Under section 35 of the Bombay Shops and Establishments Act accumulation of leave is allowed only to the extent mentioned therein. Under the Bank's leave rule No. 3 privilege leave at the rate of 2 days for every month of service and accumulation of such leave to the extent of 2 months are permissible and that is more advantageous that the provisions of section 35 of the aforesaid Act with regard to the quantum of such leave and accumulation thereof. Under section

69 of the said Act therefore the employees are entitled to take benefit of the Bank's rules.

11. The Bank has produced a statement showing the quantum of leave to the credit of the employees concerned at the date of retrenchment. I therefore direct the Bank to pay to the employees concerned for the period of their accumulated privilege leave wages at the rate specified in section 36 of the Bombay Shops and Establishments Act.

Demand No. 3.—“Payment of provident fund including the employers' contribution.”

12. The Bank has contended in its written statement that the provident fund including employer's contribution and interest thereon have been paid to every one of the employees concerned. This demand was not pressed by Mr. Shukla at the hearing. It is rejected as it no longer survives.

Demand No. 4.—“Payment of compensation for retrenchment.”

13. The Union has claimed compensation at the rate of one month's salary for each year of service for the retrenched employees on the ground that the Bank dispensed with the services of the senior men while retaining junior persons and it did not absorb the retrenched personnel in the other branches or the branches newly opened by it.

14. The Bank contends that the question of payment of compensation to the retrenched workmen does not arise in this case as sufficient notice had been given to the employees concerned of the intended closure of the Ahmedabad branch. It has stated further that, although it offered to absorb the retrenched employees in other branches, they did not accept the offer. With regard to the grievance made by the Union that senior employees were retrenched while retaining junior ones the Bank's defence is that the whole of the staff of the Ahmedabad branch including both clerical and subordinate staff was retrenched.

15. It is important to note that the discharge of the workmen employed in the Ahmedabad branch was occasioned by the closure of that branch. The Union has not attributed any *mala fides* to the Bank. It does not allege that the retrenchment was due to any victimisation of the workmen concerned. The Calcutta Bench of the Labour Appellate Tribunal has laid down the principle on which retrenchment relief, that is, compensation for loss of employment for no fault of the employees, should be granted in the Presidency Jute Mills Co., Ltd., *vs.* Presidency Jute Mills Co., Employees' Union (I Labour Law Journal 1952 p. 796). Therein it is stated that in assessing the amount of compensation in such a case various factors have to be taken into consideration, *viz.*, the length of service of the employees, causes for retrenchment and the ability of the employer to pay. The Bombay Bench of the aforesaid Tribunal in the General Motors (India), Ltd., *vs.* Their workmen (I Labour Law Journal 1953 p. 748) has expressed itself as follows on the question of payment of retrenchment relief:

“Retrenchment relief is not a question of law but a question of fact depending upon varying circumstances existing at the date when retrenchment takes place. When persons are retrenched they have nothing to fall back upon and are subjected to the strains and stresses of unemployment, and retrenchment relief is given by tribunals to soften the rigours of the hardship which those unfortunate employees have to undergo; nor must we be taken to say that certain other factors are altogether absent from consideration when we decide questions of retrenchment relief. When a person is deprived of his employment, he suddenly loses a career on which he had started with the hope and expectancy of a life long career of security, and even when he secures fresh employment he will have to start a fresh career with all its disadvantages; and we cannot altogether ignore this aspect of the matter. Therefore, when considering the appropriate retrenchment relief applicable to any particular case, we have to take into account the sum total of all factors, including the wage-scales prevailing in the concern, the rate of provident fund, the scheme of gratuity or other retirement benefit which the company already has, as also the other indirect benefits which an employee ordinarily receives while in the employ of a concern, together with the financial capacity of the concern to pay retrenchment relief and the state of the labour market.....”

The considerations which can be urged against the Bank in this case are that the retrenched employees were permanent workmen who had put in fairly long service varying from 4 to 6 years and it did not observe the principle "last come, first go" in the matter of retrenchment. The Union has put in an affidavit to the effect that the staff of both the branches of the Bank of Jaipur at Ahmedabad had been appointed for the local area of Ahmedabad only and they were not informed either orally or in writing by the Bank authorities that they were liable to transfer from Ahmedabad to any area outside it. The Bank has not brought any evidence to controvert this statement. The Bank did, as a matter of fact, transfer the staff of the accounts department of the Ahmedabad branch to the Relief Road branch after the closure of the former. It is clear therefore that while closing the Ahmedabad branch the Bank should have gone according to the length of service of the staff of both the branches taken together and terminated the services of the juniormost from the entire body of staff but they did not do so.

16. The circumstances which may be urged in favour of the Bank on the question of retrenchment relief are that it had given sufficient notice to the employees concerned of the intended closure of the branch. The Bank did offer to provide employment outside Ahmedabad for the retrenched personnel but they refused to accept the offer. Some of the retrenched staff have already secured employment elsewhere. According to this award the employees will get their notice pay as also their wages for the accumulated period of leave. The Bank falls in the "C" class of banks referred to in the Sen Award. The compensation provided for retrenchment of permanent bank employees under the All India Industrial Tribunal (Bank Disputes)—Shastri Award—is half a month's pay and allowances for every completed year of service subject to a minimum payment of two months' pay and allowances. Having regard to the facts and circumstances of this case I think I should award compensation at the rate of 21 days' wages and allowances for every year of service.

17. Reliance was placed by Mr. Shukla on an award of the Central Government Industrial Tribunal at Calcutta in a complaint under section 33A made by the discharged employees of the Kanpur branch of the Jaipur Bank in support of his contention that compensation should be awarded in this case at the rate of one month's salary together with allowances for each year of service. He urged that no difference in the quantum of compensation should be made between the discharged employees of the Ahmedabad branch and of the Kanpur branch of the same Bank. But the quantum of compensation must depend upon the facts of each case. I have stated above that having regard to the facts of this particular case it would meet the ends of justice if I award compensation at the rate of 21 days' wages and allowances for each year of service. I therefore direct the Bank to pay compensation to the retrenched staff of the Ahmedabad branch at the rate of 21 days' wages and allowances for each year of service. Compensation shall be calculated on the basis of the wages and allowances drawn by the employees for the month of May 1951. For purposes of calculation service of six months or more shall be taken as one complete year of service and service of less than six months ignored. The amounts payable under this award shall be paid within two months from the date this award becomes enforceable.

BOMBAY;

(Sd.) S. R. ADWALPALKAR, Secretary.

The 9th January, 1954.

(Sd.) S. H. NAIK, Industrial Tribunal.

[No. LR-100(55).]

New Delhi, the 25th January 1954

S.R.O. 368.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the matter of an application under section 33A of the said Act from Shri Nand Lal Singh, a workman of Digwadih Colliery.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

APPLICATION No. 401 OF 1953

(arising out of Reference No. 6 of 1952)

In the matter of an application U/S 33A of Industrial Disputes Act, 1947.

PRESENT:

Shri L. P. Dave, B.A., LL.B.—Chairman.

PARTIES:

Shree Nand Lal Singh, Census Clerk, Digwadih Colliery, P.O. Jealgora, Dist. Manbhumi, Bihar.—*Complainant.*

Vs.

M/S. Tata Iron & Steel Co. Ltd., Jamadoba, P.O. Jealgora, Dist. Manbhumi.—*Opposite party.*

APPEARANCES:

Shri B. N. Sharma, General Secretary, Tata's Collieries Labour Association, P.O. Jealgora, Dist. Manbhumi, Bihar.—*For the Complainant.*

Shri D. Narsingh, Chief Personnel Officer, M/S. Tata Iron & Steel Co. Ltd., P.O. Jealgora, Dist. Manbhumi, Bihar.—*For the Opposite party.*

AWARD

This is a complaint under Section 33A of Industrial Disputes Act.

2. The complainant alleges that he was appointed as an underground munshi in 1945 and worked as such till November 1948 when he was transferred as a Census Clerk and since then he has been working as a clerk. He further alleges that because of his being an active member of the Tata Collieries Labour Association, his promotion has been deliberately stopped and that when discriminatory treatment was pointed out to the officers of the opposite party, they adopted an unreasonable and whimsical attitude. It is then alleged that in March 1953, the Superintendent of Collieries of the opposite party promoted seven clerks of the Digwadih colliery from a weekly rate to a monthly rate and the complainant's name was not included in the list; and that this amounted to a punishment and as it was inflicted during the pendency of Reference No. 6 of 1952 without the express permission of the Tribunal, the opposite party contravened the provisions of Section 33 of the Industrial Disputes Act; and hence the present complaint.

3. The opposite party contends that the application is legally not maintainable; that the promotion from weekly rate to monthly rate was neither automatic nor was it a condition of service and the alleged action of the opposite party did not therefore amount to a contravention of any of the provisions of Section 33 of the Act. It is also contended that the refusal to promote the complainant from weekly to monthly rate was not unreasonable or whimsical or by way of punishment. The opposite party was not aware about the complainant being a member of the Tata Collieries Labour Association. The opposite party considers the category of a munshi different from that of a clerk and the seniority in the matter of promotion of a clerk was considered from the date of appointment in that category. It was therefore urged that the present complaint should be dismissed.

4. It is an admitted fact that the complainant has been in the service of the opposite party in the Digwadih colliery belonging to it. He joined service as an underground munshi in 1945. He was taken up as a clerk in December 1948 and he has been working as such. The opposite party has two scales of pay for clerks. One is a monthly rate and the other is the weekly rate. It is also not in dispute that the monthly rate is higher than the weekly rate. It is also an admitted fact that the company has a particular number of posts for the monthly rate and a particular number for the weekly rate. Whenever a vacancy occurs in the monthly rated clerks, a clerk drawing weekly rate is usually appointed (promoted) to the monthly rated post. In March 1953, the management promoted seven clerks from the weekly rate to the monthly rate and the complainant's grievance is that he should have been one of the persons so promoted; but he was not promoted because he was taking active part in the union activities. He alleges that his non-promotion amounted to a punishment and also a change in conditions of service; and as this was done during the pendency of Reference No. 6 of 1952 and as no permission was obtained by the management, there has been a breach of Section 33 of the Industrial Disputes Act and he has therefore filed the present complaint under Section 33A.

5. The management contend that the promotion to the monthly rate is a matter of internal management and the Tribunal should not interfere in the discretion of the management. They also say that by promoting a particular person to the monthly rate, it could not be said that the conditions of service of other persons were changed or that other persons were punished, and hence there was no breach of Section 33. I need not go into these questions in this case; because assuming

that the management have committed a breach of Section 33, I think that the contention of the management that the complainant was not entitled to promotion to the monthly rate in March 1953 must be accepted.

6. As I said above, it is an admitted fact that in March 1953 seven clerks were promoted from the weekly rate to the monthly rate and the complainant alleges that he should have been one of those persons. His grievance on this score rests on the ground that his seniority should be considered on the basis of his appointment in service in 1945 as an underground munshi. On the other hand, the management urge that when making a promotion they only take into account the service of the employee in the particular category. In this case, the complainant was working as a clerk from December 1948 and when considering his promotion as a clerk to the monthly rate, his service only from December 1948 should and would be taken into account. It is an admitted fact that if the complainant's service only as a clerk is taken into account, he could not have claimed promotion to the monthly rate in March 1953. It is however urged that his service as a munshi ought to be taken into consideration in considering his seniority.

7. I do not think that the management are wrong in holding that they should take into account the service only as a clerk in considering the question of promotion. A person may have worked in different capacities but that would not necessarily make him fit for a particular job or for promotion in that job. The work as an underground munshi is of a different type from the work as a clerk. I was told that at present the management have framed a rule that only a matriculate can be appointed to the post of a clerk; that is, a non-matriculate would not be eligible for appointment as a clerk, though he may be eligible for appointment as an underground munshi. This would mean that a clerk requires better qualifications than those of an underground munshi. In considering the question of promotion, the management would therefore be justified in considering the length of service only as a clerk. As I said above, if the complainant's service only as a clerk is taken into account, he could not claim promotion to the monthly rate and hence his grievance is not proper.

8. I may point out that five out of the seven clerks who were promoted to the monthly rate, were working as clerks from 1944 and 1945. So far as these five persons are concerned, there can be no doubt that they were senior to the complainant even if the complainant's service as a munshi is taken into account. He could therefore have no grievance against the promotion of these five persons, who have been working as clerks before the complainant joined service even as a Munshi.

9. Regarding the other two, they were appointed as clerks in 1950 and 1952 respectively. It however appears that these two persons were originally working as Mining Sirdars from 1939. They are A. R. Bose and S. M. Huda. Both of them were drawing a salary of Rs. 33 per month as Mining Sirdars and they were appointed as clerks in 1952 and 1949 respectively, as can be seen from their service cards. It appears that A. R. Bose was found on examination in April 1950 to be suffering from pneumoconiosis and the chest specialist recommended him for surface work. Similarly S. M. Huda had failed to qualify medically fit for continuing in the post of Mining Sirdar. These facts appear from the papers produced by the management in this case. It was in these circumstances that these two persons were appointed as clerks. As I said above, they were already monthly rated employees and they were taken up as clerks also on a monthly rate. It could not therefore be said that it was a case of favouritism or the like. Actually the appointments of these two persons as clerks on monthly rate were made long ago and neither the complainant nor any one else made any complaint about it. I may also mention that even if these two persons (namely A. R. Bose and Huda) were not entitled to confirmation in the monthly rate, the complainant could not have got a monthly rate, because admittedly there are seven or eight clerks senior to him, who are still drawing a weekly rate. Till they are considered for the monthly rate, the complainant's case could not be considered.

10. It was argued on behalf of the complainant that the management was always considering the service of a munshi also for promoting the clerks to the monthly rate. In this connection, they refer to the case of one Bijoy Mukherjee working in pits 6 and 7 and that of one B. N. Pal working in the Jamadoba Colliery. They have not been able to point out a single instance from this (Digwadih) colliery. It was said that in pit Nos. 6 and 7 Bijoy Mukherjee was appointed as a clerk on 19th June 1950 and was promoted to the monthly rate from 1st January 1953; and though there were 5 other clerks who had been appointed as clerks before him,

they were not promoted to the monthly rate. In this connection, it appears that Bijoy Mukherjee received some injuries in 1949 which incapacitated him from working underground. It was because of this that he was given compensation and later appointed as a clerk. An exception appears to have been made in his case, on compassionate grounds.

11. Regarding Jamadoba Colliery, it was said that B. N. Pal was appointed as a clerk on 5th February 1949 while S. P. Banerjee was appointed as a clerk on 4th January 1950 and still Banerjee was appointed to the monthly rate on 1st May 1952 while Pal was appointed to the monthly rate on 1st July 1952. It was argued that this must be because Banerjee had been working as a munshi from 1947 and his service as such must have been taken into account. In this connection, it appears that Banerjee applied for promotion to the monthly rate in March 1952 and was promoted to that from 1st May 1952. Thereafter B. N. Pal gave an application on 20th May 1952 for promotion to the monthly rate and he was promoted to that rate from 1st July 1952. There is nothing on record to show why the case of Pal was not taken into account, when Banerjee's application was considered.

12. Excepting these cases, the complainant has not pointed out any cases where a person's promotion was made on the basis of his service both as a clerk and a munshi. On the other hand, the management have produced other cases from this very Digwadih colliery where the service of munshi was not taken into account when promoting the clerks to the monthly rate scales. For instance, one A. Wahid was appointed as a munshi on 16th March 1944 and promoted to the post of a clerk on 13th September 1945. One S. K. Ojha was appointed as a clerk from 20th April 1944. One Mohibulla Khan was appointed as a clerk on 11th December 1944. If in making promotions service as a munshi was also to be taken into account, Wahid should have been promoted to the monthly rate before both Ojha and Mohibulla Khan. It however appears that Ojha was promoted to the monthly rate from 24th September 1950 while Mohibulla Khan was promoted to the monthly rate from 25th September 1950 and Wahid was promoted to the monthly rate from 1st January 1951. This shows that in making promotions to the monthly rate, the service only as clerks is taken into account and the service as munshis is not considered for that purpose.

13. Further even if in a stray case or two, the management may have promoted a person to the monthly rate before another person who was entitled to it, it would be that person who would have a grievance. It could not be said to establish that the rule or the practice of the management was that service as munshi has also been considered in making promotions.

14. I may repeat that I agree with the rule or practice of the management that in making promotions, the service only as clerks should be taken into account and the service as munshis could not be considered when making these promotions. That being so, it could not be said that the complainant was entitled to promotions to monthly rate in March 1953 when other persons were so promoted. I may add that Mr. Narsingh on behalf of the management assured me that when future vacancies occur, the complainant will be duly considered for promotion to the monthly rate, if he is senior to other clerks, on the basis of their services as clerks. I may also mention that though the complaint contains an allegation that the complainant was harassed because he was an active member of the Labour Union, there is not an iota of evidence to support this allegation. In their written statement, the management had clearly stated that they were not aware if the complainant was a member, far less an active member, of the Labour Union. In spite of this, the complainant has produced no evidence. This allegation cannot therefore be believed.

15. The result is that in my opinion, the complainant has not been punished nor has his condition of service been changed. He was not entitled to promotion to the monthly rate when others were so promoted. His complaint therefore fails and must be dismissed. I pass my award accordingly.

The 16th January 1954.

(Sd.) L. P. DAVE, Chairman,
Central Government Industrial Tribunal, Dhanbad.

[No. LR.2(365).]

P. S. EASWARAN, Under Secy.

New Delhi, the 25th January 1954

S.R.O. 369.—In exercise of the powers conferred by section 24 read with sub-section (1) of section 15 of the Payment of Wages Act, 1936 (IV of 1936), the Central Government hereby appoints the officer or officers appointed from time to time by the Governments of Travancore-Cochin and Madhya Bharat under sub-section (1) of section 15 of the said Act, as the authority or authorities to hear and decide, within any area in their respective States all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid within such area, to be the authority or authorities to hear and decide such claims in respect of persons employed or paid within that area by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration.

[No. Fac.61(60).]

S. NEELAKANTAM, Dy. Secy.